

## HIGHWAYS PROCUREMENT STRATEGY

<b>Cabinet Date</b>	27 September 2017
<b>Highways &amp; Flood</b>	Cllr Vernon Smith
<b>Key Decision</b>	Yes
<b>Background Documents</b>	Cabinet Paper June 2017 – Highways Procurement Strategy Development Highways Maintenance Efficiency Programme – Procurement Route Choices for Highways Maintenance Services – version 3 September 2015
<b>Main Consultees</b>	Cabinet Panel – Highways Procurement (cross party) Annual Highways Customer Satisfaction Survey Annual National Highways and Transportation Survey
<b>Planned Dates</b>	Procurement timeline as set out in Appendix A of the report
<b>Divisional Councillor</b>	All - countywide service
<b>Officer</b>	Scott Tompkins, Lead Commissioner Highways Authority Tel: 01452 328525 Email: <a href="mailto:scott.tompkins@gloucestershire.gov.uk">scott.tompkins@gloucestershire.gov.uk</a>
<b>Purpose of Report</b>	To inform Cabinet of the proposed highways services procurement strategy and to seek approval to procure and award the required contracts.
<b>Recommendations</b>	<p>That Cabinet authorise the Commissioning Director, Communities and Infrastructure to:</p> <p>(1) Carry out three legally compliant competitive tender processes for the delivery of highway services under three separate contracts:</p> <ul style="list-style-type: none"> <li>a. a seven year <b>highway services term maintenance contract</b> with options for two two-year extensions;</li> <li>b. a two year single provider contract for the delivery of <b>structural maintenance works</b>; and</li> <li>c. a six year contract for the delivery of <b>professional services support</b> with options for two two-year extensions.</li> </ul> <p>(2) Upon conclusion of the said competitive tender processes, and in consultation with the Cabinet Member for Highways and Flood, to enter into a contract with each of the preferred provider(s) evaluated as offering the Council best value for money for delivery of the three required services.</p>

	<p>In the event that the preferred provider for any of the three proposed contracts is either unable or unwilling to enter into that contract with the Council then the Commissioning Director, Communities and Infrastructure shall be authorised to award such contract to the next willing highest placed suitably qualified provider.</p>
<p><b>Reasons for recommendations</b></p>	<p>Following officer assessment, industry investigation and research, and consultation with members a procurement strategy has been developed that will deliver a revised operating model giving the best opportunity for successful delivery of highway services beyond April 2019.</p>
<p><b>Resource Implications</b></p>	<p>Annual highways revenue budgets of approximately ~£18.5m and annual capital budget of approximately ~£22m (rising to £32m over the proposed 5 year £150m investment period).</p> <p><u>Highways Contract Values</u>  For OJEC notice purposes these contract value ranges are based on predicted budgets over both the initial term and extended terms of the contracts. The values also include contingency to account for inflation, potential one-off funding bids, DfT awards and other unknown possible increases in capital funding over the total potential contracted periods.</p> <p>Term Maintenance Contract</p> <ul style="list-style-type: none"> <li>Valued between £245m and £430m</li> </ul> <p>Structural Maintenance Contract</p> <ul style="list-style-type: none"> <li>Valued at between £58m and £109m per year.</li> </ul> <p>Professional Services Contract</p> <ul style="list-style-type: none"> <li>Valued between ~£18m and ~£35m</li> </ul>
<p><b>Appendices</b></p>	<p><b>Appendix A</b> – Procurement timelines</p> <p><b>Appendix B</b> – Cabinet Panel Report: Highways Procurement</p>

## **MAIN REPORT CONTENTS**

### **1.0 Background**

#### **1.1 Current contract arrangements**

The current Term Maintenance Contract with Amey was for five years and is due to end on the 31<sup>st</sup> March 2019. It takes between 18 and 24 months to conduct a legally compliant competitive tender and to mobilise a contract of this size. A Cabinet report from June of this year set out the Council's intention to develop a procurement strategy based on an improved operating model.

#### **1.2 Operating Models**

The Highways Maintenance Efficiency Programme, in its procurement route choices tool kit, points out that there is no 'correct' model highway service delivery and it is for the highway authority to determine the best arrangement for its circumstances. Highway authorities' requirements often change over time and the model adopted at one time may not be suitable, or could be improved on, at another.

#### **1.3 Learning from the past**

Gloucestershire County Council (the "Council"), like many authorities, has been on a journey across the delivery model spectrum, from a fully in-house direct employed delivery service, prior to 1990, to partnering term maintenance contracts with the Halcrow & Ringway contract arrangements and to the single provider integrated operational structure of Gloucestershire Highways, with Atkins.

In 2013, following the national comprehensive spending review and the significant tightening of local authority budgets, the Council responded by seeking a new contract arrangement for highways that would seek to deliver better value for money by reintroducing a schedule of rates payment mechanism but also retain the value of partnership arrangements.

Officers have been considering the performance of the current operating model and investigating other models. This has included visiting a number of other authorities with varying operating models including Devon, Cornwall, Hampshire, Warwickshire, Worcestershire and Cumbria to learn from their experiences.

### **2.0 Determining the future operating model**

Although there are a number of factors to take into consideration when determining which operating model to choose. For the Council, three key areas stand out.

- Pace of change – evolution of existing model or revolutionary step changes
- Attitude toward risk – getting the balance of risk ownership right
- Financial implications – of the procurement and the proposed model

#### **2.1 Pace of change**

There is no doubt that the first two years of the current highways contract experienced mobilisation problems and reduced performance in part due to the amount of changes being made from the previous operating model. Since year three Amey's performance has continued to improve as evidenced both in performance reports, reduced complaints and in recently customer satisfaction survey results. On the whole officers believe we have a sound operating model and contractual

arrangements and officer recommendations would be for 'evolution not revolution' in making improvements to the term maintenance contract arrangements essentially returning to some of the best aspects of the previous Gloucestershire Highways arrangements but also keeping some of the best bits of the current arrangements.

This is not to say that some change is not good and the proposals to move some specification and design work back in-house as well as the direct customer interface are changes that put more control of highways decision making with the Council but also bring back a managed level of risk. The proposed changes reflect a level of reasonable change which should provide a smooth transition.

## 2.2 Attitude toward risk

The Highways Maintenance Efficiency Programme (HMEP) has provided a toolkit to help authorities choose the right operating model for them and one of the key factors in the tool kit is a measure of the authority's willingness to retain risk. This is best described in service delivery model diagram (Figure 5, page 12) which shows the range of service delivery models against a risk spectrum.



The Council, with its single provider model, has transferred a significant amount of its risk over to the contractor. In some cases this has been very successful with a good example being the responsibilities for safety inspections, repairs and claims handling. However, in some instances this risk transfer has come at a higher cost, particularly around the design of structural maintenance where officers can evidence that contractors avoid risk by applying overly robust design standards to works that could otherwise be delivered through simple 'walk talk and build' processes.

The current recommendation and learning from other authorities is that best value can be achieved by seeking a better balance of risk sharing by taking some of the specification and design of works back in-house.

The proposal is to move the Council from using a single provider model to a multiple provider model with some day to day operating decision making and design of works being delivered by an in-house team resulting in approximately 45 staff transferring into the Council. This would give the authority more control over the deliver of works without significantly increasing its exposure to risk.

### 2.3 Best practice - Asset Delivery Model

Council officers have been looking at industry best practice and considering better ways of working. This has included close working with neighbouring authorities, active participation in the South West Highways Alliance, benchmarking with similar authorities and a Highways Peer Review over the last year. It has also included talks with Highways England over their recent move to an Asset Delivery Model as well as with Devon, Wiltshire and Worcestershire County Councils where a similar delivery model is used.

There is clear evidence in the highways industry that a delivery model which combines the best use of local control over design, specification and planning of works with the ability to tender delivery through competitive construction contracts is delivering significant value and improved quality. These models pass most of the construction risks over to the providers but retain the design and planning risks.

It is important that the Council continues to explore alternative delivery models for highway services to ensure best value for taxpayers. Feedback from the industry during soft market testing in July and August confirmed that the proposed operating model for the Council will be seen as following the best practice demonstrated by the Highways England changes and other recent local authority procurements.

### 2.4 Proposed Operating Model

The Council's current model is multiple provider in that, whilst there is a large single provider contract with a relatively small client for most work, separate contracts are in place for street lighting, traffic signals and parking as well as individual contracts for the delivery of major schemes (over £500k) such as the Elmbridge Court Roundabout improvements.

The Council's proposed model expands its existing multiple provider model, breaking down the delivery of highway maintenance services into three key contracts:

- (a) a smaller term maintenance contract delivering of day to day maintenance works;
- (b) a structural maintenance contract delivering resurfacing works; and
- (c) a professional services support contract providing specialist design, project management and transport planning services.

The proposed model will require separate procurement exercises for each of the three following contracts:

- (a) Term Maintenance Contract: procuring a contractor which is typified as "focused and efficient" with a strong maintenance delivery background and significant experience of self-delivery (delivering services with owned plant and directly employed labour). Important to recognize that we want to procure a long term relationship which is driven by timely quality delivery whilst having a strong cost transparency.
- (b) Structural Maintenance Contract: procuring a direct relationship with a tier one contractor that delivers cost-effective resurfacing works in order to maximise the additional capital investment in roads over the next five years.
- (c) Professional Services Contract: procuring a long term professional relationship that will support the council on technically complex design of works, project

management of major schemes and provide a strong bidding capability to maximise future financial opportunities.

## **2.5 Financial implications**

Financial modelling has resulted in an overall assessment that the proposals in respect of the three procurements are expected to result in a 'cost neutral' outcome. Financially, the proposed model is not a significant change from the current delivery model with broadly similar revenue spending planned across the budget areas sourced from existing planned budgets. The only exception to this being the significant increase in capital spending on carriageway structural maintenance to be delivered through the new structural maintenance contract.

An assessment of risk highlighted some dis-benefits and benefits from the proposed procurements. The financial assessment included the following factors:

- The Council will be the only large county council that will be commencing a procurement process for highway services this autumn which, it is hoped, will result in a robust competition exercise. It is anticipated that this will help to reduce inflationary rises in prices that have occurred since the 2013 procurement of the current highways term maintenance contract.
- The Council's decision to make a significant investment to improve the condition of its highway network is also a key influencing factor in choice of delivery models to ensure the Council is able to achieve best value from the proposed additional investment. Moving structural maintenance design responsibilities back in house will reduce fee-on-fee arrangements. An internal team will enable significant more 'walk talk and build' and better control of risks allowing design fee costs to be reduced.
- The Council also recognises that where high quality delivery is required, such as with routine maintenance (pothole repairs) where poor performance creates unacceptable reputational issues, that cost implications should be secondary to quality of delivery. It is proposed that this element of service is paid for on a cost-plus arrangement. This is likely to result in some additional cost pressures. Greater client involvement should produce a lower local area overhead which will help to off-set this pressure and key performance indicators will be used to ensure efficiency.
- One of the concerns in moving to a three contractor model is that each contract will incur overhead costs and it will be important that bid negotiations look to keep overhead rates proportional to the individual contracts to avoid any potential cost increases; however, there is a recognition of the importance, particularly with the term maintenance contract, of setting minimum levels of management and supervision as these are so critical to ensuring delivery performance. This may result in some cost pressures.

## **3.0 Procurement Strategy**

### **3.1 Procurement timelines**

The procurement timelines for the three proposed contracts are shown in **Appendix A**

### **3.2 Contract Terms**

Term Maintenance Contract

- Initial seven year term (as recommended by the industry to secure equipment capital spending), but also reiterates the Council's commitment and desire to develop this contract as a long term relationship with a focus on quality of delivery.
- Two potential two-year extensions (total of 11 years)
- Extensions to be awarded (or taken away) based on performance

#### Structural Maintenance Contract

- Two year term (as recommended by the industry to avoid price-hedging given the volatility in the oil market which drives bitumen prices)
- No need for indexation, reducing inflationary and price-hedging pressures
- Relatively low procurement timescales and costs
- Recognizes the importance of oil prices on the market

#### Professional Services Contract

- Six year term (to align contract end dates and to demonstrate the Council's commitment and desire to develop a long term positive relationship)
- Two potential two-year extensions (total of 10 years)
- Extensions to be awarded (or taken away) based on performance

### **3.3 Highways Procurement Cabinet Panel**

A cross-party cabinet panel has been set up to assist in steering the highways procurement strategy development and have been involved over the last two months in reviewing the proposed contract model and procurement strategy. The panel is supportive of the proposed procurements (**Appendix B**). The panel will also be involved in helping officers to develop the evaluation and quality assessment criteria. The panel will continue to meet throughout the procurement processes.

### **3.4 Procurement Evaluation – ensuring we get the right contractors**

Officers have also been considering how best to manage the procurements to ensure that the selection criteria is robust and offers the greatest opportunity to select the right contractors for future highway service delivery. In consultation with the Highways Procurement Cabinet Panel, officers have developed a staged approach to the term maintenance contract procurement which takes advantage of current Highways Maintenance Efficiency Programme's (HMEP) standard contracts and procurement guidelines and a Competitive Procedure with Negotiation prescribed under PCR 2015. Officers will use a standard evaluation restrictive procurement process for tendering the structural maintenance contract and professional services contract.

#### Term maintenance contract evaluation process

Stage One: Provider's will complete and submit their pre-qualification questionnaires, following which the Council will short list of 5 to 7 contractors to be invited to bid.

Stage Two: Tenderers will be asked to submit initial tenders containing proposed service operation information against a set of quality, delivery and cost criteria (commonly known as the quality submission). In addition, they will be asked to identify specific risk areas for negotiation. Initial tenders will then be evaluated and

scored allowing officers to short list the three best bids. Scores at this stage will have a greater weighting to the quality criteria.

Stage Three: The three best tenderers will then be asked to enter into a competitive negotiation process. This will involve discussing areas of risk within the contract as well as the management overheads. Bidders will also be asked for areas they feel that the Council's tender documents could be amended to reduce risk or improve operations or price.

Stage Four: At the end of the negotiation process the Council will reissue its revised tender documents noting the areas of change. The remaining three bidders will then be asked to prepare their final bid submissions.

### **3.5 Managing the contracts going forward**

One of the key risks identified with the proposed delivery model is the potential difficulty in coordinating works delivery between three contractors. To help mitigate this challenge officers have been looking at how the contracts would be managed including the governance arrangements. The following areas are critical to mitigating this interface risk.

- Governance structures
- Performance management linked to contract extensions
- Robust contractual processes for managing poor performance

#### Governance structures

The proposal is to create a robust governance structure to manage the whole of the highways service which has both strategic and operational boards and for this to be placed within the tendering documents for all three proposed procurements. This structure will include the following:

- **Strategic Highways Governance Board:** Focused on ensuring oversight of overall highway services delivery and coordination of contracts. Review of overall performance and for resolving escalated or unresolved issues. It will be made up of Cabinet Members and directors from all of the organisations.
- **Operational Highways Board:** Focused on ensuring operational delivery is coordinated between contractors and for resolving operational and contractual issues. It will be made up of Council managers and managers from each of the highways contractors.
- **Health and Safety Board**  
Focused on ensuring health and safety is coordinated across all highways service delivery, sharing best practice, joining up H&S campaigns and training, making best use of H&S resources. Chaired by the term maintenance contractor it will also include H&S representatives from all of the organisations, including wider supply chain.
- **Skills Academy**  
Focused on developing apprenticeship opportunities and a long term pool of skilled highways, construction and civil engineering staff. The group will have



representation from all of the contractors, local educational facilities, GFirst LEP and the wider supply chain.

#### Performance Management

The highways term maintenance contractor and the professional services contractor will be able to earn (or have removed) extensions to the terms of their contracts with the Council based on their performance against a set of robust key performance indicators, hence appointed contractors will need to continue to demonstrate good performance throughout the term of such contracts. The award of the extensions will be made in accordance with the Council's governance arrangements based on performance; however, going forward the Council will have the option of removing one or two years of the two-year extension if the service doesn't continue to perform. This process will continue through the extent of the contracts.

The structural maintenance contractor will also be given a robust set of key performance indicators that will be used to operationally manage the contract and will need to continue to demonstrate good performance in order to be considered for future retendering opportunities.

#### Managing poor performance

Awarding extensions tied to performance is one way of demonstrating that the Council is looking to procure a long term positive relationship with a term maintenance contractor. The use of the Highways Maintenance Efficiency Programmes standard contract documents, including New Engineering Contract (NEC4) will ensure that robust mechanisms are in the contract to enable contractual and commercial issues to be resolved. However, the contract will also include a special mechanism for resolving poor performance or lack of service delivery by allowing any element of failing service to be substituted by the Council.

Experience tells us that it is unlikely that a contractor will fail in delivery of the entire contracted service, but far more likely that they will experience challenges in one or two specific areas of service. This mechanism will include a detailed escalation process where issues are first addressed at an operational board level, then escalated to the director level governance board before a final 'substitution' penalty is applied. Should the Council have to substitute an element of the service the contract will allow for the Council to charge back to the contractor any additional costs incurred for delivering the service with an alternative provider.

Industry feedback during soft market testing was welcoming of this approach as no contractor wants to have a service substitution reported to the market as it impacts directly on their ability to bid for other local authority contracts.

#### **4.0 Options Considered**

Various operational delivery model options were explored during the development of this procurement strategy. These options were considered both by senior managers and Cabinet members and the cross-party Cabinet Panel. Options considered included the following:

- Direct Labour Organisation – taking all of the service delivery back in-house. This would include directly employing over 300 staff, substantial set up costs,

and risk transfer to the authority as well as the significant level of cultural change.

- Teckal company arrangements – setting up an arms-length business to operate the service. High set up costs, risk transfer, significant cultural change and legal advice were all deterrents to considering this option.
- Single Provider – loss of control, higher costs and performance failure and reputation risks were deterrents.
- Framework contracts – although seen to deliver good value, significant contract management and internal client team is required to make this model successful.

## **5.0 Conclusion**

Following industry best practice and research and taking on feedback from members, a procurement strategy has been developed that evolves the Council's current delivery model taking back control of elements of service delivery whilst retaining and strengthening the arrangements for managing the whole service with the contractors employed to delivery the service on the ground.

The model has been tested and challenged with the cross party Cabinet Panel and with the industry through soft market testing. Other options have also been considered and discounted these include re-tendering the existing contract, in-house delivery and the use of a framework model.

## **6.0 Risk Assessment**

Risks are mainly in the areas of service continuity, legislative and regulatory, reputational and health and safety. In addition there are specific procurement risks around the selection of the right contractor to partner with as well as the risks of inflationary cost increases. These risks are well understood, and the best practice and industry engagement and research has led to the development of a procurement strategy which aims to manage the risk profile.

One of the key risks identified with the proposed delivery model is the potential difficulty in coordinating works delivery between (potentially) three different contractors. Section 3.5 sets out how this risk is being addressed and mitigated.

Risk will continue to be regularly reviewed as part of the project management processes and any significant changes will be reported to the Cabinet Member for Highways and Flood.

## **7.0 Officer Advice**

To endorse the proposed delivery model changes set out in this report and to authorise the procurement processes.

## **8.0 Equalities considerations**

A Due Regard Statement will be developed in line with the approved contract. This will ensure that decision makers and those involved in the procurement and implementation of the service are aware of the needs of those groups with protected characteristics, and how they may be particularly affected by this service.

<b>Report Title</b>	Highways Procurement Strategy
<b>Statutory Authority</b>	Gloucestershire County Council holds responsibility for the maintenance of highways as the Highway Authority as set out by the Highways Act 1980
<b>Relevant County Council policy</b>	Local Transport Plan 3 Transport Asset Management Plan
<b>Resource Implications</b>	<p>Annual highways revenue budgets of approximately ~£18.5m and annual capital budget of approximately ~£22m (rising to £32m over the proposed 5 year £150m investment period).</p> <p><u>Highways Contract Values</u> For OJEC notice purposes these contract value ranges are based on predicted budgets over both the initial term and extended terms of the contracts. The values also include contingency to account for inflation, potential one-off funding bids, DfT awards and other unknown possible increases in capital funding over the total potential contracted periods.</p> <p>Term Maintenance Contract</p> <ul style="list-style-type: none"> <li>Valued between £245m and £430m</li> </ul> <p>Structural Maintenance Contract</p> <ul style="list-style-type: none"> <li>Valued at between £58m and £109m per year.</li> </ul> <p>Professional Services Contract</p> <ul style="list-style-type: none"> <li>Valued between ~£18m and ~£35m</li> </ul>
<b>Sustainability checklist:</b>	
Partnerships	Highways providers.
Decision Making and Involvement	GCC Commercial, Legal Services.
Economy and Employment	The development of a procurement strategy will address economic opportunities and employment opportunities around the delivery of highway services in the future.

Caring for people	NA
Social Value	The procurement strategy addresses how social value aspects can be included in the future highways contract arrangements.
Built Environment	The procurement strategy sets out the long term plans for operating the highway service to maintain and improve highway assets.
Natural Environment' including Ecology (Biodiversity)	NA
Education and Information	NA
<b>Tackling Climate Change</b>	Carbon Emissions Implications? No Vulnerable to climate change? No
<b>Due Regard Statement</b>	Has a Due Regard Statement been completed? No – see the equalities considerations section of the report.
<b>Human rights Implications</b>	This service area is unlikely to have Human Rights Implications
<b>Consultation Arrangements</b>	There are no formal consultation requirements for this service; however, the service annually carries out customer satisfaction surveys and regularly updates a customer service improvement plan based on the findings of the surveys.