

DELIVERY OF STRUCTURAL MAINTENANCE WORKS 2020-2022

Cabinet Date	24 July 2019
Highways & Flood	Cllr Vernon Smith
Key Decision	Yes
Background Documents	Cabinet Paper June 2017 – Highways Procurement Strategy Development Cabinet Paper September 2017 – Highways Procurement Strategy
Main Consultees	Cabinet Panel – Highways Procurement (cross party) Annual Highways Customer Satisfaction Survey Annual National Highways and Transportation Survey
Planned Dates	Structural maintenance works from April 2020 to 2022
Divisional Councillor	All - countywide service
Officer	Kath Haworth, Lead Commissioner Highways Authority Tel: 01452 32879 Email: Kathryn.Haworth@gloucestershire.gov.uk
Purpose of Report	To seek approval to procure and award a contract for the delivery of structural maintenance works for 2 years from April 2020 to 2022, following the successful conclusion of the current contract.
Recommendations	That Cabinet authorise the Lead Commissioner, Highways Authority to: <ol style="list-style-type: none"> 1. Carry out a public procurement law compliant competitive tender process for the delivery of a two year single provider contract for the delivery of structural maintenance works commencing 1st April 2020. 2. Award such contract (following the conclusion of the said competitive tender process) in consultation with the Cabinet Member for Highways and Flood, to the preferred provider(s) evaluated as offering the Council best value for money for delivery of the required works. In the event that the preferred provider is either unable or unwilling to enter into that contract with the Council then the Lead Commissioner, Highways Authority shall be authorised to award such contract to the next willing highest scoring suitably qualified provider.
Reasons for recommendations	Following officer assessment, industry investigation and research, and consultation with members, a procurement strategy was developed that delivered a revised operating model giving the best opportunity for

	<p>successful delivery of highway services. The first contract in this revised model is coming to an end in March 2020, delivering successfully over it's term and we now wish to renew this contract.</p>
Resource Implications	<p>Contract Value. The Structural Maintenance Contract is estimated to be valued at £55m over the full 2 year term. For OJEU notice purposes, the contract value range is based on predicted budgets over the full term of the contract. 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 contracted period.</p>

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Background

Current contract arrangements

A Cabinet report from September 2017 revised and improved the way in which the council procured and delivered its Highways Contracts.

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

- (a) A seven year (with options for 2 two-year extensions) 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 recognise that we want to procure a long term relationship which is driven by timely quality delivery whilst having a strong cost transparency. Awarded to Ringway in April 2019.
- (b) A two year 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. Awarded to Tarmac Trading Limited in April 2018.
- (c) A 6 year (with options for 2 two year extensions) 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. Awarded to Atkins in April 2019.

As a result of the procurement exercise for the two year Structural Maintenance Contract described in paragraph (b), a 2 year contract was entered into with Tarmac Trading Limited for Structural Maintenance in April 2018 which comes to an end in March 2020. The contract is for a 2 year term as recommended by the industry to avoid price-hedging given the volatility in the oil market which drives bitumen prices.

Current contractor performance

The current contract is performing well and meeting the targets set by the Council. Schemes are being managed well and are being delivered on time and to budget. The co-location of the supplier in council offices is working particularly well.

Financial implications

Moving structural maintenance design responsibilities back in house has reduced fee-on-fee arrangements. The internal team has enabled significantly more ‘walk talk and build’ and better control of risks allowing design fee costs to be reduced.

Procurement Strategy

The procurement strategy is to carry on with implementing the authorised procurement strategy from the September 2017 Cabinet Paper, Highways Procurement Strategy.

Procurement timelines

The procurement timelines for the proposed tender is:

Issue OJEU Contract Notice:	by end September 2019
Tenders returned:	by 6 th January 2020
Tenders evaluated:	6 th – 30 th January 2020
Tender Awarded:	by 31 st January 2020
Contract Mobilisation:	Feb-Mar 2020
Contract Starts:	1 st April 2020

Contract Terms

- Two year term (as recommended by the industry to avoid price-hedging given the volatility in the oil market which drives bitumen prices)
- Relatively low procurement timescales and costs
- Recognises the importance of oil prices on the market
- Officers will use a standard Open evaluation procurement procedure for tendering the structural maintenance contract.
- The industry standard NEC contract will be used again, updated to the latest version NEC 4, to align with the Term Maintenance and Professional Services contracts and to ensure consistency of delivery.

Managing the contracts going forward

One of the key risks identified with the revised delivery model was the potential difficulty in coordinating works delivery between three contractors. To help mitigate this challenge, officers looked 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

A robust governance structure has been created and is now in operation 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. This structure includes 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. 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. 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 also includes 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 has representation from all of the contractors, local educational facilities, GFirst LEP and the wider supply chain.

Performance Management

The structural maintenance contractor will 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

The use of the 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.

Options Considered

Various operational delivery model options were explored during the development of the 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.

Conclusion

Following industry best practice and research and taking on feedback from members, a procurement strategy was developed that involved the Council's 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.

The model is working well and Officers would like to continue the good work and ensure a seamless transition into the next phase of procurements.

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. This will be managed through the Gloucestershire Highways governance structures and the NEC contract mechanisms.

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.

Officer Advice

To authorise the procurement process and contract award described in the "Recommendations" section of this report.

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.

Report Title	Delivery of structural maintenance works 2020-2022
Statutory Authority	Gloucestershire County Council holds responsibility for the maintenance of highways as the Highway Authority as set out by the Highways Act 1980
Relevant County Council policy	Local Transport Plan 3 Transport Asset Management Plan
Resource Implications	<u>Contract Value.</u> The Structural Maintenance Contract is estimated to be valued at £55m over the full 2 year term. For OJEU notice purposes, the contract value range is based on predicted budgets over the full term of the contract. 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 contracted period.
Sustainability checklist:	
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
Tackling Climate Change	Carbon Emissions Implications? No Vulnerable to climate change? No
Due Regard Statement	Has a Due Regard Statement been completed? No – see above.
Human rights Implications	This service area is unlikely to have Human Rights Implications
Consultation Arrangements	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.