



REPORT TITLE: Delivery of structural maintenance works 2022-2026

Cabinet Date	10 th November 2021
Cabinet Member	Councillor Vernon Smith, Highways and Flood
Key Decision	Yes
Purpose of Report	To seek approval to procure and award a contract for the delivery of structural maintenance works for up to 4 years from April 2022 to 2026, following the successful conclusion of the current contract.
Recommendations	<p>That Cabinet delegates authority to the Head of Highways in consultation with the Cabinet Member for Highways and Flood to:</p> <ol style="list-style-type: none">(1) Conduct a competitive procurement process in respect of a contract for the supply of structural maintenance works for the purpose of surfacing and structural repairs to the County Highways network. The proposed contract shall continue for an initial period of 2 years and include an option to extend its term for a further period of not more than 2 years;(2) Award such contract to the preferred tenderer; and(3) Determine whether to exercise the option to extend such contract for a further period of not more than 2 years on the expiry of the initial 2 year term.

<p>Reasons for recommendations</p>	<p>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 successful delivery of highway service. Details of such revised operating model are set out in the Background section of this report. Having delivered successfully throughout its term, the second contract in this revised model is coming to an end in March 2022, hence it is proposed that the council should procure a replacement contract. The Procurement strategy includes an option to extend the proposed new 2 year contract by a further period of 2 years if predetermined performance levels have been met, thereby providing a more efficient use of internal resources and ensuring the continuity of service delivery.</p>
<p>Resource Implications</p>	<p>The estimated value of the proposed Structural Maintenance Contract is £40m over the initial 2 year term and a further £40m over the optional 2 year extension period. For Contract 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> <p>The proposed procurement exercise will be carried out using existing in-house resources and topped up with external consultancy resources which will be funded from existing Highways budgets. The Highways service is funded from Council revenue and capital grant from the Department of Transport.</p>
<p>Background Documents</p>	<p>Cabinet Paper June 2017 – Highways Procurement Strategy Development Cabinet Paper September 2017 – Highways Procurement Strategy Delivery of structural maintenance works 2020-2022 Procurement Policy Note PPN 06/21 – Taking Account of Carbon Reduction Plans in the procurement of major government contracts</p>
<p>Statutory Authority</p>	<p>Gloucestershire County Council holds responsibility for the maintenance of highways as the Highway Authority as set out by the Highways Act 1980.</p>
<p>Divisional Councillor(s)</p>	<p>All - countywide service</p>
<p>Officer</p>	<p>Name: Kath Haworth, Head of Highway Authority Tel: 08000 514514 Email: Kathryn.Haworth@gloucestershire.gov.uk</p>

Timeline	Issue Contract Notice: by end November 2021 Tenders returned: by 14 th January 2022 Tenders evaluated: 14 th – 31 st January 2022 Tender Awarded: by 1 st February 2022 Contract Mobilisation: Feb-Mar 2022 Contract Starts: 1 st April 2022
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Background

Current contract arrangements

1. A Cabinet report from September 2017 revised and improved the way in which the council procured and delivered its Highways Contracts.
2. The approved 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 and again in April 2020 after a further procurement exercise.
 - (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.
3. 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 came to an end in March 2020. A second procurement exercise was carried out in 2019/20 and a 2 year contract was entered into with Tarmac Trading Limited in April 2020 which comes to an end in March 2022.
4. Both contracts were 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. For the 2022 contract we are again seeking to award a 2 year contract but with the option to extend for a further 2 years if predetermined performance levels have been met. The prices in the extension will be linked to pre-agreed indices. The indices used are the resource cost indices published by Building Cost Information Service (BCIS) Price Adjustment Formulae Indices for Highways. These have been used successfully since 2019 in the Highways Term Maintenance Contract and provide an accurate, robust and widely accepted methodology within the Highways industry to account for fluctuations in prices.

Current contractor performance

5. 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 provider in council offices is working particularly well.

Financial implications

6. 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

7. The procurement strategy is to carry on with implementing the authorised procurement strategy from the September 2017 Cabinet Paper, Highways Procurement Strategy with the addition of the option to extend by 2 years if predetermined performance levels have been met. The use of industry recognised price indices 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.

Procurement timelines

8. The procurement timelines for the proposed tender is:

Issue Contract Notice:	by end November 2021
Tenders returned:	by 14 th January 2022
Tenders evaluated:	14 th – 31 st January 2022
Tender Awarded:	by 1 st February 2022
Contract Mobilisation:	Feb-Mar 2022
Contract Starts:	1 st April 2022

Managing the contracts going forward

9. 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

10. 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.

Alternative Options Considered

11. 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

12. 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.
13. 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. On this basis, officer advice is to authorise the procurement process and contract award described in the "Recommendations" section of this report.

Risk Assessment

14. 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.

15. 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.
16. 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.

Climate Change implications

17. In order to assess providers in this area we are seeking to introduce the principles of the recently released Procurement Policy Note PPN 06/21 – Taking Account of Carbon Reduction Plans in the procurement of major government contracts. It comes in to effect from 30th Sept 2021 for procurements in excess of £5M per annum and requires the following;

‘As part of assessing a supplier’s technical and professional ability, In-Scope Organisations should include, as a selection criterion, a requirement for bidding suppliers to provide a Carbon Reduction Plan confirming the supplier’s commitment to achieving Net Zero by 2050 in the UK, and setting out the environmental management measures that they have in place and which will be in effect and utilised during the performance of the contract’.

Much more about what the Carbon Reduction Plan details and the pass / fail nature of the assessment – here;

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991622/PPN_0621_Taking_account_of_Carbon_Reduction_Plans_2_.pdf

18. This is an emerging policy that will be developed for use within the upcoming tender for the M5 Junction 10 improvements and the methodology and any lessons learnt from this will be introduced in to the Structural Maintenance tender process.

Equality implications

19. Has an Equalities Impact Assessment (EIA) been completed? Yes
20. The specification for the contract is set at a national level and has a range of standards integrated within it that are specifically targeted at ensuring that specific groups are catered for. These include for example guidance on the design standards of tactile paving services and the guidance on inclusive mobility.
21. The Tender has been developed to ensure that the potential providers take due regard of how their business and business practices effect the target groups. At tender stage potential providers will be asked to explain:

- How their business operations will pay due regard to the target groups in terms of;
 - Workforce recruitment and development
 - Work planning
- Day to day operations

22. Cabinet Members should read and consider the Equalities Impact Assessment in order to satisfy themselves as decision makers that due regard has been given.

Data Protection Impact Assessment (DPIA) implications

23. The DPIA Decision checklist tool did not identify any implications that required a DPIA to be completed for the contract.

Social value implications

24. The Council will be using a new performance and evidence-based approach to Social Value, based on the National TOMs (Themes, Outcomes and Measures) which has been developed for the Council by the Social Value Portal. Tenderers will be required to propose credible targets against which performance (for the successful Tenderer) will be monitored. Tenderers are free to choose those measures that are proportional and relevant to their business and this specific contract. However, a key success factor for Tenderers will be to demonstrate the ability to deliver against the commitments made.

25. Tenderers will be required to provide the following as part of their tender:

- a) A quantified Quantitative Social Value Proposal; and
- b) A Qualitative Social Value Proposal providing evidence describing how the social value being proposed will be delivered against each of the measures offered.

26. The Council will make provision for these commitments in its contract with the winning Tenderer which will then be monitored and reported on periodically throughout the term of the contract.

27. The Council recognises that the process of measuring and delivering Social Value requires flexibility and a collaborative approach. Agreed Social Value commitments may require a certain amount of refinement as a result. A key requirement is the willingness of the provider to work openly and transparently with the Authority whilst bearing in mind that the overall value of Social Value commitments made must be delivered.

28. Full details on the Social Value Portal and the National TOMs framework is available here <https://socialvalueportal.com/national-toms/>

29. This is an emerging policy that will be developed for use within the upcoming tender for the M5 Junction 10 improvements and the methodology and any lessons learnt from this will be introduced in to the Structural Maintenance tender process.

Consultation Feedback

30. Engagement has taken place across the business to understand current requirements and feedback obtained from both current customers and contractors. The current delivery model of our Highways contracts has now been well tested and challenged over the last 3 years, with initial input from the cross-party Cabinet Panel, from the industry through soft market testing and evidenced by the successful delivery of the previous 2 iterations of this contract.

Officer recommendations

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

Performance Management / Follow Up

32. 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 the optional extension.
33. 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.
34. 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.
35. 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.