



Report to:	Environment & Neighbourhood Committee	Date :	30 March 2017
Report title:	Highways and Street Lighting Works Contracts Procurement		
Report from:	Mary Morrissey - Strategic Director of Environment, Housing & Regeneration		
Ward/Areas affected:	Borough-wide		
Chair of Committee/Lead Member:	Councillor Jill Whitehead		
Author(s)/Contact Number(s):	Mehmet Mazhar, Strategic Management Support, Shared Highways & Transport, 020 8547 5943		
Corporate Plan Priorities:	<ul style="list-style-type: none"> • An Open Council • A Green Council 		
Open/Exempt:	Open		
Signed :			Date: 16 March 2017

1. Summary

- 1.1 This report provides an update on the re-procurement of Sutton's highways and street lighting works term contracts and seeks approval to proceed as detailed in the recommendations.

2. Recommendations

It is recommended that the Environment & Neighbourhood Committee:

- 2.1 Note the progress made on the procurement process being carried out to secure new highways and street lighting works term contracts, to commence on the 1 October 2017.
- 2.2 Agree that the procurement of new highways and street lighting works term contracts, (arranged as 4 Lots in a framework agreement) be progressed to secure these contracts, commencing on the 1 October 2017, for the following Lots:

Lot 1 – Ad hoc reactive and minor highways planned maintenance

Lot 2 – Planned highways improvements (schemes)

Lot 3 – Planned (machine) carriageway resurfacing

Lot 4 – Street Lighting (planned, reactive, structural & electrical testing)

- 2.3 Note that in the interim period whilst the procurement for the new contracts is carried out, that Sutton's existing highways works contracts, listed below are to be extended by contract variation by a further 6 months from their expiration date of the 31 March 2017.
- Planned Highways Maintenance and General Works Term Contract - Contractor: FM Conway Ltd
 - Reactive Highways Maintenance Services – Contractor: RJ Dance (Contractors) Ltd
 - Street Lighting Maintenance and Improvement Services: Kier Integrated Services Ltd
- 2.4 Agree to use the London Highways Alliance Contract (LoHAC) framework established by Transport for London (TfL), if and when required, for highways maintenance, street lighting and improvement works, (should the extended contracts, or new contracts, not fulfil the Council's performance expectations).
- 2.5 Agree to delegate authority to the Strategic Director of Environment, Housing and Regeneration, in consultation with the Chair of the Environment and Neighbourhood Committee, to consider the tender evaluation outcome and officer recommendations, and award the contract lots referenced in recommendation 2.2 above, in accordance with the procurement process.

3. Background

Current Position

- 3.1 Sutton Council annually delivers a vast range of highways and transport services to its local community of people who live, work and spend their leisure time in the borough. The public highway maintained at public expense is an important part of the integrated transport network that supports the local economy and ensures sustainable growth. It is the most expensive asset the Council owns. The cost of replacing this asset was valued at £725m in 2012/13. It is therefore a top priority for the Council to maintain and improve the highway network in order to enable safe and expeditious movement of its users throughout the borough. This would not be possible without support and assistance of specialist highways works contractors engaged under various works contracts.
- 3.2 In 2010, the council awarded the three contracts referenced in recommendation 2.2 above, to provide a range of highways and transport services covering, 1) highways planned and reactive maintenance and general works, awarded to FM Conway Ltd, 2) reactive highways maintenance, awarded to RJ Dance Ltd and 3) street lighting maintenance and improvement improvements, awarded to Cartledge May Gurney (now Kier Integrated Services Ltd).
- 3.3 All three of these contracts were awarded for an initial 5 year term, with the option for Sutton Council to extend the term by a further 2 years in single year extensions, totalling an overall duration of 7 years, ending on the 31 March 2017. On the 15 January 2015, the Environment and Neighbourhood Committee agreed the extension of these contracts in principle, subject to

satisfactory negotiations with the suppliers, following which the three contracts were extended and are therefore due to expire on the 31 March 2017.

- 3.4 Due to changes in management during the reorganisation to set up the Kingston and Sutton Shared Highways and Transport Service the procurement process was started later than anticipated, requiring a further extension of these contracts by 6 months to cover the period 1 April 2017 to 30 September 2017. The procurement process to provide new contracts arranged as a framework beyond the 1 October 2017 is in progress and a programme outlining the planned procurement time table is attached to this report as Appendix 1, (to follow).
- 3.5 Sutton Council's Commissioning Board have considered the contents of this report and have contributed to its development.

Proposed Way Forward

- 3.6 In compliance with the European Union (EU) procurement Directives covering public sector contracts as set out in the Public Contracts Regulations 2015 and in order to achieve 'best value', a notice of the proposed tender must be published in the Official Journal of the European Union (OJEU), (via the online London Tenders Portal), as the overall contract value of £2.8m per annum (£28m over 10 years) exceeds the OJEU threshold of £4,104,394 for works contracts. It is proposed that a single stage open procurement procedure will be used.
- 3.7 It is proposed that a group of 4 individual contracts, or 'Lots', will be set up in a framework arrangement with an agreement between the Council,(as the employer), and the individual Lot contractors for the supply of works. Each Lot can be used on a "call-off" basis, meaning there is no obligation to purchase services, but purchases can nonetheless be made by the employer via each of the individual Lots as required. In summary, the scope of the services that can be purchased from each of the individual Lots, as referenced in recommendation 2.3 of this report, is detailed in the table, below. The appointed contractor will be obliged to provide the Works as and when ordered and may only decline to do so if it can show good reason why it is unable to carry out the Works.

Lot 1 – Ad hoc reactive and minor highways planned maintenance	
Scope of works	<ul style="list-style-type: none"> ● Reactive maintenance of highways assets, such as roads (including pothole repairs, patching), kerbs, footways, cycleways, footpaths, verges, street furniture, guardrail, safety barriers, drainage (including soakaways), signs, road markings, etc. ● Planned highways maintenance of footways, footpaths, verges, paving renewals, etc. ● Reactive carriageway minor repairs, e.g. patching, 'Nufalt' etc. ● Emergency call-out service, including accident damage remedial works etc.
Lot 2 – Planned highways improvements (schemes)	
Scope of works	<ul style="list-style-type: none"> ● Civil engineering works associated with planned improvement schemes such as traffic calming, 20mph zones, controlled parking zones, parking



	<p>projects, pedestrian and environmental improvement, accident remedial, junction improvement, cycle lanes/paths, traffic priority schemes, associated drainage works, general traffic management schemes, pedestrian/cycle crossings, traffic islands, bus lane, bus priority, public realm improvement, associated drainage, signs (including electrified signage) and road markings), etc.</p> <ul style="list-style-type: none"> ● Major highways and transport schemes
<p>Lot 3 – Planned (machine) carriageway resurfacing</p>	
Scope of works	<ul style="list-style-type: none"> ● Planned carriageway (machine) resurfacing, surface treatments and reconstruction etc.
<p>Lot 4 – Street Lighting (planned, reactive, structural & electrical testing)</p>	
Scope of works	<ul style="list-style-type: none"> ● Improvement and general works of street lighting, planned and reactive maintenance of street lighting equipment, electrified street furniture including lamp columns, road signs, bollards, traffic monitoring equipment, cable laying, electrical fittings, etc. ● Testing of electrical equipment on the public highway ● Testing of structural integrity and fitness for purpose of lamp columns ● Emergency call-out service

- 3.8 The proposed length (or term) of each contract Lot is 7 years, commencing on the 1 October 2017, with the option to extend for a further 3 years, to 30 September 2027, in single year extensions, subject to the Employer’s decision and satisfactory performance as measured by Key Performance Indicators (KPI’s), as referenced in paragraph 3.11, below. Each Lot is independent of each other in terms of performance assessment. The length of the term (potentially 10 years in total) will allow tenderers to submit more competitive bids than if the term was shorter, as the greater volume of works purchased over the longer term could be offset against their initial capital investment costs, thus reducing their risk on making a reasonable profit with the submission of keener price bids. Price reductions will be sought in later years and in the extended term.
- 3.9 The form of Contract will be New Engineering Contract 3 (NEC3), term service contract, with the partnering option.
- 3.10 Due to the duration of the contracts, a partnering agreement will be entered into between each of the Lot contractors and the Employer to encourage collaborative working, openness and mutual trust to develop between the parties to each of the contracts. The partnering arrangements will require continual benchmarking, target setting, assessment, feedback and adaptation via the KPI’s and regular structured meetings to ensure continuous improvement throughout the term of the contracts.
- 3.11 The KPI’s will be linked to the contract extensions. There will be quarterly evaluations and annual assessments that will determine this. Subject to satisfactory performance (in line with the

agreed targets), the term of the contract beyond the core 7 years may be extended by a further 3 years in single year extensions, subject to the outcome of the overall annual assessment, allowing the full term of the contract, i.e. 10 years, to be achievable. Each additional single year extension may be awarded once two successive years of good performance (measured via KPI's) has been achieved, effectively credit being built up annually in 6 month blocks. Therefore, subject to good performance it may be possible to award additional single year term extensions in years 2, 4, and 6 of the contract term. If the contractor's performance is below set targets, then there may be reduction in term in 6 month blocks. This does not take away the right of the employer to terminate any of the contracts at any given time, if not satisfied with the overall performance of the contractor/s, and remedial action fails to deliver improvement.

3.12 The KPI's will have annual targets that will be incrementally increased year on year to ensure that there is continuous improvement throughout the term of the contract. There will be quarterly reviews culminating in annual reviews that determine whether the contract term is extended or reduced beyond the core 7 year term. It is proposed that the KPI's will address the following areas:

- Customer satisfaction
- Resources & Performance: Starting and completing works to agreed programme
- Quality: Completing works with zero defects
- Timely submission of invoices
- Health and safety records
- Environmental performance
- Social value (including local apprenticeships, linking with the Looked After Children Service)

3.13 The tender submissions will be evaluated on a 60:40, Quality:Price basis, (i.e. with 60% of the total available marks being awarded for quality and 40% of the marks being awarded for price). For each Lot, the quality evaluation will be based on an assessment of a combination of the tenderer's quality submission and a panel interview of select members of the team that they propose to resource the contract.

3.14 As part of their tender submission, the prospective suppliers will be required to submit a figure for the percentage discount they would offer if they were to be successful in being awarded more than one Lot.

3.15 The current and proposed contracts are and will be Sutton Council Contracts managed by the Kingston and Sutton Shared Highways and Transport Service. The geographic area that the contracts will cover is the geographic area within the Sutton Borough Council boundary. However, a provision will be made within the contracts for the Royal Borough of Kingston (RBK) to participate at any given time within the term of the contracts, if they so wish. This is in recognition of the partnership working between the two boroughs via the Kingston and Sutton Shared Highways and Transport Service. However, the contractual arrangements RBK will have should they participate, will be between RBK and the contractors and will be completely separate from the Sutton arrangements.

4. Issues

Risks of Not Extending the Existing Contracts

- 4.1 If the existing three contracts are not extended by a further 6 months from the 1 April 2017, to the 30 September 2017, there is risk that the Capital Highways and Transport Programme for 2017/18 may not be delivered.
- 4.2 Negotiations for contract extensions of 6 months beyond the 31 March 2017 have been successful and both FM Conway and RJ Dance have agreed to continue providing a service on the same terms and conditions until the 30 September 2017. RJ Dance has, however, requested that their contract prices be adjusted in accordance with the Retail Price Index (RPI) from the 1 April 2017 as stipulated in their contract. This has been agreed as it is in line with the contract terms. Negotiations with Kier Integrated Services are ongoing and will be reported in due course.
- 4.3 Any commitments that have been made during the fiscal year 2016/17 with the existing incumbent contractors will be honoured and works completed. Payments will be dealt with as accruals and be paid for, from the 2016/17 programme budgets. Commitments made during the additional 6 month contract extension period will be paid for from the 2017/18 programme budgets.

Performance of Existing Contractors

- 4.4 The performance of Incumbent contractors, FM Conway Ltd and RJ Dance (Contractors) Ltd, Kier Integrated Services Ltd has generally been satisfactory.

FM Conway Ltd

- 4.5 FM Conway has worked for the borough for over 20 years and is the current incumbent 'highways maintenance and general works' contractor having been appointed in 2010 for this purpose. They are now in the 7 and final year of the possible 5 plus 2 years term, which expires on the 31 March 2017. Over the term of the contract their performance has been monitored via KPI's at regular operational meetings.
- 4.6 They are a company that is predominantly based in south London, although they have contracts with local authorities across all of London, including with Westminster City Council. In facilitation of their contract with Sutton, they have invested in local infrastructure in the form of a depot in Beddington Lane to enable cost effective deliveries.
- 4.7 They operate a self delivery model and do not rely on a complex supply chain thus minimising their risk associated with costs and effective coordinated delivery, which is of benefit to its clients.



- 4.8 In mid-term of their contract with Sutton, some performance issues were identified and were addressed as part of the regular contract meetings held, and during the contract extension negotiations. These related to failures of core samples taken of finished works (coring is a random sampling of highway works to assess if the sub surface materials meet the required standards), and adherence to the requirements of road space occupation in line with the Council's Traffic Management Act permitting requirements.

RJ Dance (Contractors) Ltd

- 4.9 RJ Dance has worked for the borough since 1980, undertaking contracts for reactive, planned maintenance and minor highway improvements, including several major schemes under previous historic contracts, over this period. They are the current 'reactive highways maintenance and general works' contractor also now in the 7th and final year of the possible 5 plus 2 years term, which expires on the 31st March 2017. Their performance is also monitored via KPI's at regular operational meetings.

- 4.10 They are relatively smaller as a company than FM Conway and have a culture of working collaboratively in partnership with its clients. They have always been proactive to the needs of the borough, who they value as an important client.

- 4.11 Similarly, there have been some performance issues regarding traffic management arrangements of live sites and failures of core samples of completed works.

Kier Integrated Services (formerly Cartledge May Gurney)

- 4.12 In 2010, the 'street lighting maintenance and improvement' contract was awarded to Cartledge May Gurney who were later acquired by Kier Integrated Services and the contract was accordingly novated. The existing contract includes identified KPI's under an 'incentive schedule' with targets to act as a measure of performance in consideration of contract extensions, which have been awarded.

- 4.13 However, since the company has been acquired by the Kier group, some of the existing management and personnel have left the employment of the company, which has impacted on its management capacity, affecting the company's overall resilience.

- 4.14 In terms of performance, generally their response to emergency call outs, night scouting and reactive remedies to power outages/faults has been satisfactory. In contrast, they have limited capacity with regards to works which require a higher level of planning and management. These aspects of performance have been raised with the contractor and are the subject of ongoing monitoring. The extension of the contract by a further 6 months post 31st March 2017 is also ongoing and will be updated on in due course.

5. Other Options Considered

Do Not Extend the Existing Contracts by a Further 6 months – Complete Re-procurement by the 31st March 2017

- 5.1 This is not a viable option as, 1) the procurement process cannot be completed within this timeframe, 2) even if it was possible to re-procure within this timeframe, this would not allow an adequate mobilisation period for any new contractors that may be appointed, placing the delivery of the Capital Highways and Transport Programme at risk, and 3) additional pressure of time and available resources will be placed on the procurement team in the final (busiest) quarter of the financial year.

Extend the Existing Contracts by a Further 6 months – Re-procure New Contracts to Commence on the 1 October 2017

- 5.2 This is the preferred option. Negotiations with existing incumbent contractors have commenced. FM Conway and RJ Dance have agreed to continue for the additional 6 month period and have also confirmed their interest in tendering for the new contracts. Negotiations with Kier integrated Services are ongoing and will be reported in due course. The South London Legal Partnership (SLLP) is providing legal support to complete the legal documentation to enable this.

Purchase Services from LoHAC

- 5.3 This option has been explored and may offer a 'fall back' position, if the extended contracts fail to perform during the additional 6 month period. In terms of using the LoHAC for the provision of highways and street lighting services on a longer term basis, (instead of re-procuring new Sutton Contracts), earlier negotiations in this regard did take place, but failed due to LoHAC management requesting an additional £600k per annum management fee to service the borough, which is considered to be unreasonable, as re-procurement of the new 'bespoke' contracts for Sutton will provide better value for money.
- 5.4 However, we should keep our options open and be prepared to use LoHAC if necessary to plug any gaps in the interim. (The LoHAC is an 8 year framework due to end in 2021).

6. Impacts and Implications

Financial

- 6.1 Costs in relation to these contracts will be borne within existing budgets. The prospect of any savings being made as a result of these contract negotiations should be pursued to aid the Council's financial position.

Legal

- 6.2 The proposals are contractually sound and although the further variations / extensions are in effect, short term direct awards the risk of challenge is probably low.

7. Appendices and Background Documents

Appendix letter	Title
A	Highways Project Plan
B	Integrated Impact Assessment

Background documents
None

Audit Trail		
Version	Final	Date: 16 March 2017
Consultation with other officers		
Finance	Yes	Tony Cooke (Principal Accountant)
Legal	Yes	John Cheetham (SLLP)
Integrated Impact Assessment required?	Yes	Attached

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