

From: Neil Baker Cabinet Member, Highways and Transportation
Simon Jones – Corporate Director, Growth Environment and Transport.

To: Environment & Transport Cabinet Committee Meeting – 11th January 2024.

Subject: Highways Term Maintenance Contract – Update and Next Steps

Key decision – No

Classification: Unrestricted

Past Pathway of Paper: N/A

Future Pathway of Paper: N/A

Electoral Division: All

Summary: The current and recently awarded Highways Term Maintenance Contract with Amey Highways commenced on 1st September 2023 for a period of 32 months.

This contract will end on 30th April 2026 by which time a new commissioned contract will need to be procured and put in place. This ensures continuity of a Highways Maintenance Service and that KCC can meet its statutory responsibilities as Highway Authority in accordance with the Highways Act 1980 and other pertinent mandatory legislation.

There are several key lessons learnt from this process including the need to ensure timely reporting of key issues and progress to this committee.

However there has been unprecedented disruption and volatility in the markets that has caused a delay in the commissioning cycle. Global economic factors and double-digit inflation would have seriously impacted a contract of this size, value, complexity, and duration.

This in turn could have placed greater operational risk with a potentially unaffordable contract for KCC to deliver its statutory highways service.

It was anticipated that by extending the prevailing contract by 32 months would provide a period undertake a full commissioning process and to allow the highways market to stabilise.

Recommendation(s):

Environment and Transport Cabinet Committee members are asked to endorse or to make comment or recommendation to the Cabinet Member in relation to the report, lessons learnt and next steps.

1. Introduction.

1.1 On 21 August the Cabinet Member for Highways and Transport took a decision to:

- Award a new contract to Amey Highways for 32 months.
- Delegate to the Corporate Director of Growth, Environment and Transport in consultation with the Cabinet Member for Highways and Transport to take relevant actions including but not limited to entering into contracts and other legal agreements, as necessary to implement the decision.
- Agree to the proposed procurement timeline for the replacement contract.

2. Reason(s) for decision:

2.1 KCC has a legal duty to maintain its respective sections of the highway network under section 41 of the Highways Act 1980 and this demands continuity of operational service.

2.2 Many of these services are delivered through a Highway Term Maintenance Contract (HTMC) with Amey Highways Ltd. The previous contract expired on 31 August 2023. A new contract was urgently needed to be in place from 1 September 2023.

2.3 Several key services are delivered through this contract including:

- Winter Service Provision – i.e. gritting/salting of the road network during freezing conditions including ploughing during snow events.
- Drainage Maintenance and Capital Projects – i.e. cyclical highway drainage cleansing, emergency response during storm events and capital drainage repair schemes.
- Structures – i.e. bridge repairs, tunnels maintenance and management and construction of new structures.
- Highway patching and small- to medium-scale road asset renewal works – i.e. pothole repairs and larger surface defect repairs of the highway
- Pavement asset preservation services – i.e. carriageway and footway life extension treatments such as surface dressing.
- Emergency Response – i.e. respond to emergencies across the network due to weather, emergency services support, vehicle collisions and structural asset failure both in hours and out of hours, 24/7/365.
- Highway Improvement Scheme Delivery – i.e. construction of schemes for crash remedial measures, engineering and traffic schemes and s106 requirements.

3. Financial Implications

3.1 Despite the prevailing double-digit inflation, the extended contract provided for an overall increase in price of circa 10%.

- 3.2 68 rates required specific adjustment to ensure that they remain sustainable for delivery. These rates remain critical for the delivery of the service and primarily related to asphalt works that have seen exceptional industry increases in material costs and labour.
- 3.3 The prevailing contract contains circa 7,000 individual work rates.
- 3.2 The price increase is split between capital and revenue budgets with circa one third revenue to two thirds capital. Expenditure against these budget areas will be contained and managed within available budgets/resource envelope.
- 3.3 Price indexation increases are applied annually to KCC revenue budgets however capital budgets see no such increase. The consequence of not increasing KCC capital budgets whilst the prevailing delivery contract benefits from inflation adjustment result in less work being delivered year on year.
- 3.4 The estimated highways revenue pressure for 2023/24 is £1m. This has been met from in year savings particularly around lower than budgeted energy costs and by avoiding circa £400k which had been budgeted to address potential additional costs for a re-commissioning the HTMC.

4. Contract Performance

- 4.1 KCC has implemented several commissioning programmes over the past six years with regard to re-procuring the HTMC. On each occasion the decision has been taken to extend the existing contract in the main for reasons of the potential increased costs of a new openly competed contract and that there was acceptable delivery performance of the incumbent.
- 4.2 The current contract management system includes thirty-five key performance measures which are assessed monthly. Whilst there has been no service failure or material breach of the contract throughout the previous 12 years arrangement, Amey's recent performance over the last 12 months has been variable and this has been reflected in the regular Performance Dashboard reports to the Environment and Transport Cabinet Committee.
- 4.3 As part of the arrangements for the new contract, a joint performance steering group has been established to ensure performance improvements, and efficiencies are made to closely manage and to hold AMEY Highways Limited accountable for performance issues.

5. Value for Money

- 5.1 In 2022, a Value for Money (VfM) review of the Enterprise AOL Limited contract and Highways & Transportation operational management arrangements was undertaken by The Future Highways Research Group (FHRG). The review concluded that the contract demonstrated strong performance against all the VfM dimensions.
- 5.2 Furthermore, that it was within the top four of assessed (FHRG) members within the last 18 months which evidences the performance of the contract. A recommended action plan for further improvements was developed and is being embedded within the service.

5.3 FHRG have been asked to review delivery against the action plan and continue to engage with the wider market to help shape our arrangements beyond the current Amey contract.

6 Market Capacity

6.1 As previously stated market intelligence suggested that delaying procurement would be prudent to allow the highway/energy/bitumen markets to stabilise.

6.2 The industry has and continues to experience significant volatility due to the impact and aftermath of COVID-19 and the war in Ukraine. The consequence of these and other global economic factors has seen widescale challenges in the supply of materials, skilled and unskilled labour, and increasing fuel and financing costs. This has led to large uplifts in inflation with many indices (e.g. RPI, CPI forecasting between 10% –12% and BCIS forecasting up to 30% increases over the past 12-18 months).

6.3 Local authorities that are procuring new contracts have seen highly erratic pricing, reduced supplier availability and tenderers seeking to both increase contingencies significantly and to formally transfer several critical risks back to the client.

6.4 It is anticipated that over the next 18 months improved supplier confidence and market capability and capacity will return. This should provide a suitable and competitive platform to procure, commission, and secure a long term, affordable and beneficial (10-20 year) highway term maintenance contract.

7. Lessons Learnt

7.1 During the recent routine and exceptional Environment and Transport Cabinet Committees and Scrutiny Committee Members were clear about their concerns on how the commissioning of the extended contract was undertaken.

7.2 The absence of suitable long-term debate and the lack of the ability to influence and contribute to the commissioning process was identified. Whilst Members understood the importance and urgency of the decision, they were clear that the last-minute approach to such a critical and reputationally important service would not be accepted in the future.

7.3 Members highlighted:

- Need for active participation in the commissioning process to ensure wider consideration (residents, businesses, locations) were considered during the process.
- Opportunity to explore and shape how the service could be delivered in the future.
- The duration and performance framework expected for a contract of this type. When would contract reviews be undertaken and the type and scale of operational contract measures and performance indicators. How can residents be better served and informed.
- Opportunities to consider the various contracting arrangements and the scale of work that could be undertaken under the contract. There was a

real desire to explore and understand the various delivery models. How to better incentivise operational services.

- Confirmation that this contract would be recommissioned and not extended again.
- The timeline for the commissioning process, the regularity of Member sessions/workshops and whether a dedicated member group should be set up. Alternatively, whether this could be routinely achieved within Cabinet Committee.
- The service promised to return in this (January) Cabinet Committee with further information.

7.4 Since the August meeting the service has been focusing on embedding the extended contract and implementing the revised rates and additional management controls. It has also been a period of very high demand across multiple service lines, that said and in response to the above challenges and requests:

- A Prior Information Notice has been published to commence market engagement activity in January / February 2024. This confirms KCC intention to recommission the Highway Term Maintenance Contract in open competition. It seeks engagement with the market and this information will aid in shaping the future contract.
- In terms of commissioning timeline, it is expected that the following will need to apply:

Estimated Milestones	Date
Risk, Assumptions, Issues & Dependencies Register (RAID)	January 2024
Map out Analyse Phase activities	January 2024
Stakeholder and Communications Plan	January 2024
Detailed Project Plan	January 2024
ETCC – Report and Member Briefing	January 2024
Formal Market Engagement	January/February 2024
Initial EqIA Assessment	February 2024
Member Session	February 2024
Strategic Outline Case Completion	March 2024
Approval of SOC by Project Board	March 2024
Strategic Outline Case Approval CPOB	April 2024
Member Session	May 2024
Completion of Outline Business Case	May 2024
Approval of OBC by Project Board	May 2024
Approval of OBC by CPOB	May 2024
Member Session	July 2024
ETCC – Delegated Authority	September 2024
Selection Questionnaire (SQ) Process	November 2024
Initial Tender Period	January/February 2025
ETCC Update Paper	March 2025
Final tender period	June 2025

Development of FBC	September 2025
Member Session	Sept/Oct 2025
Approval of FBC	October 2025
Procurement Oversight Board Final QA	October 2025
Cabinet Member for Approval	October 2025
Contract Award	October 2025
Mobilisation	November 2025
New delivery arrangements/contracts start	1 May 2026
Project Closure	May 2026

- A commissioning board has been established. This board will monitor and act as necessary to ensure service quality, governance, cost, and the commissioning schedule stay in line with expectation. The Cabinet Member for Highways will be invited to these meetings.
- It is anticipated that ETCC Members will be provided a formal report of each session and that formal working sessions will be arranged during February, May, July, and Sept/Oct. These Member working sessions will allow check, challenge, and new ideas to be tabled insofar as the service and commissioning team can take away and establish the viability, risk, and opportunity for each. These can then be considered during the next board and workshop and adopted as appropriate.
- It is hoped that this process will allow Members to actively participate and shape the future service during the commissioning process and address the deficiencies identified.

8. Legal Implications

- 8.1 KCC has a legal duty to maintain its respective sections of the highway network under section 41 of the Highways Act 1980 and this demands continuity of operational service.
- 8.2 While Members will be able to shape and influence the future Highways Term Maintenance Contract, the service must always comply with legislation, best value (and VfM), and the adopted Well Managed Highway policy.

9. Equality Implications

- 9.1 An Equalities Impact Assessment will be undertaken at the appropriate time.

10. Data Protection Impact Assessment

- 10.1 A Data Protection Impact Assessment will be undertaken at the appropriate time.

11. Summary and next steps

- 11.1 The extension of the Highways Term Maintenance Contract was urgent, and the decision was taken at speed. This prevented Members the time to fully check, challenge and explore the options to deliver the contracted services.
- 11.2 Considering the impending commissioning of the next Highways Term Maintenance Contract, which is required to start 1 May 2026, actions are being implemented to address the cited deficiencies.
- 11.3 In this regard the service is seeking to adopt a commissioning schedule and associated sessions to ensure both Member contribution is recognised and that that suitable governance is maintained.

12. Recommendations

- 12.1 Environment and Transport Cabinet Committee members are asked to endorse or to make comment or recommendation to the Cabinet Member in relation to the report, lessons learnt and next steps.

<p>Lead Officers:</p> <p>Andrew Loosemore Head of Highways 03000 4116532 andrew.loosemore@kent.gov.uk</p> <p>Richard Emmett Senior Highway Manager Richard.emmett@kent.gov.uk</p>	<p>Relevant Director:</p> <p>Haroona Chughtai Director of Highways & Transportation 03000 412479 haroona.chughtai@kent.gov.uk</p>
---	---