

From: Matthew Balfour, Cabinet Member – Environment & Transport
David Beaver – Head of Commercial Management & Waste Services

To: Environment & Transport Cabinet Committee – 16 September 2015

Decision No: 14/00142

Subject: Proposed extension to the Highways Term Maintenance Contract currently let to Enterprise AOL (now Amey)

Key decision – Affects the whole of Kent, with expenditure greater than £1m

Classification: Unrestricted

Past Pathway of Paper: None

Future Pathway of Paper: For Cabinet Member decision

Electoral Division: All

Summary:

It is proposed by Highways, Transportation & Waste to extend the current Highway Term Maintenance Contract by two years from September 2016 to September 2018

This contract was awarded to Enterprise AOL in September 2011. The initial term is for five years with an option to extend by up to a further five years. Enterprise AOL was acquired by Amey in April 2013 however Enterprise AOL remains a trading entity.

Maintenance activities covered by this contract are the maintenance and improvements of Carriageway and pavements, Streetlights, Drainage, Winter Service, Ridges and other Structures and Emergency Works. It does not include major resurfacing and reconstruction or Traffic Signal Maintenance.

Recommendation:

The Environment & Transport Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member to agree the proposed two year extension to the Highways Term Maintenance Contract currently let to Enterprise AOL from September 2016 – 2018 to allow Highways, Transportation & Waste to undertake a full review in line with the recently published Commissioning Framework.

1. Introduction

- 1.1 The Term Maintenance Contract was tendered and let in 2011 at the time of the economic downturn. KCC secured prices that were 20% cheaper than the market. It secured strong contractual terms that still favour KCC today and a performance framework that penalises the Contractor for poor performance.
- 1.2 The Contract was let to Enterprise AOL. In April 2013 this company was acquired by Amey. Performance had been largely stable and unchanged from

the outset until November 2014, when Amey introduced new standard operational procedures. These included new IT systems, a new organisational structure and supply chain arrangements. Undertaking such key changes, which are normally put in place at the start of the contract, has negatively affected operational performance.

- 1.3 Highways, Transportation & Waste (HT&W) has worked very hard with Amey to address these performance issues before considering recommending a contract extension. Performance has largely stabilised, however officers believe it is in KCC's commercial interest to continue to drive operational improvements rather than re-procure this contract.
- 1.4 Performance failures have, in part, been due to Amey's organisational and operational changes. There have also been issues of supplier and sub-contractor management. The operational penalties imposed over the last year by KCC have totalled £272k. This has been re-invested back into the service.
- 1.5 Performance failures must be balanced with public perceptions. Whilst KCC has been concerned with Amey's performance, customer complaints and satisfaction has not reflected this. There have been good and improved levels of performance around general highway maintenance activities and winter service.
- 1.6 However, performance improvement action plans remain in place for scheduled gully cleaning and street lighting column replacement, and robust contract management has been put in place to ensure that these improvements are sustainable.
- 1.7 It is proposed the Street Lighting service, including maintenance of the stock, will transfer to the successful provider of LED conversion as this contract is implemented.
- 1.8 As required by the client contract management team, Amey has recently changed the leadership responsible for the Kent contract, and this is already demonstrating some performance improvements.
- 1.9 Extensions of up to five years in total are permitted within the original OJEU notice and terms of contract.

2. Financial Implications

- 2.1 Analysis undertaken against a number of comparable contracts indicate that Kent has attractive rates initially negotiated with Enterprise AOL when compared to Amey Term Maintenance contracts.
- 2.2 Amey has offered two commercial offers to Kent. They are contractually bound to do this however, both offers deliver against the Medium Term Financial Plan (MTFP).
- 2.3 Should an extension not be approved, KCC would need to fund a re-procurement exercise which costs about £600k. Further to this it is highly likely that a very similar contract model would lead to higher prices.

3. Policy Framework

- 3.1 As the statutory Highway Authority for Kent, KCC has legal obligations to ensure that the highway is maintained to a safe standard for highway users.
- 3.2 Maintaining a safe highway network also supports KCC's strategic outcome for Kent communities to feel the benefits of economic growth.

4 Detail

- 4.1 Amey has submitted an application for a contract extension which is detailed in the exempt appendix to this report. Amey has always taken responsibility for their performance and are determined to improve aspects of performance identified. It is acknowledged that elements of the service are performing to satisfaction or very well.
- 4.2 It is recommended to extend the contract by two years, commencing September 2016. Performance will be closely monitored for improvement and officers will embark upon a commissioning process that will consider all options.
- 4.3 It is not recommended at this time to extend the contract by a full five year term. Whilst Amey has asserted their fullest commitment in their extension applications, and some performance improvement is apparent, any such improvement must be demonstrably sustainable before any contractual commitment beyond a two year extension is agreed.
- 4.4 It should be noted that regardless of the extension awarded, KCC does have the contractual flexibility to remove years of agreed extension or remove services from the contract.
- 4.5 A short-term (two-year) extension is recommended in favour of a re-procurement as the current market has created unfavourable conditions for re-tendering this contract at this juncture. These include the following:
 - 4.5.1 Many of the SE7 Authorities are tendering in the next two years. This market activity is likely to reduce bidders in the South East region because tendering contracts is an expensive activity and therefore bidders will only tender against selected authorities where they feel they have the greatest opportunity of success.
 - 4.5.2 Highways England has an extensive national resurfacing program, and major contractors are finding this more attractive as the profit margins for road construction are higher than for local authority maintenance contracts.
 - 4.5.3 Maintenance and scheme prices have risen, particularly with the growth in civil works in London and generally through the economic upturn. KCC is likely to struggle to secure attractive prices, which might compromise MTFP savings targets.
 - 4.5.4 In the time available, any re-procured contract would likely be very similar to the existing contract. It would be preferable to devote more

time to run a detailed commission process in order to enable a more outcome focussed contract for the future.

- 4.6 Overall, it is considered preferable to work to improve the existing contract, albeit for a reduced extension period of two years; existing contractual performance mechanisms still incentivise performance, and it is unlikely KCC would secure such attractive terms if it went out to tender.

5 Conclusions

- 5.1 Amey has made proposals for a contract extension. (See exempt appendix to this report). They assert commitment and service improvement with added commercial and social value.
- 5.2 It is proposed that officers continue to invest management effort into ensuring the continual improvement of performance, rather than focussing on a new procurement process where the risk of a new supplier arrangement would be disrupted by contract mobilisation and higher costs.
- 5.3 Market conditions and cost pressures do not lend themselves to recommending a re-procurement at this time.
- 5.4 If a two year extension is awarded, HT&W will commence a full and detailed commissioning process, which will analyse in detail options for the future, and will engage with Members in order to further develop these into a truly outcome focussed service for the future.
- 5.5 An initial screening of an Equalities Impact Assessment has determined there are no Protected Characteristics that will be impacted upon either positively or negatively

6. Recommendation:

- 6.1 The Environment & Transport Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member to agree the proposed two year extension to the Highways Term Maintenance Contract currently let to Enterprise AOL from September 2016 – 2018 to allow Highways, Transportation and Waste to undertake a full review in line with the recently published Commissioning Framework.

7. Background Documents

- 7.1 None

8. Appendices

Proposed Record of Decision – Appendix A
Equality Impact Assessment – Appendix B

9. Contact details

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