From: Michael Payne, Cabinet Member for Highways and Transport

Simon Jones – Director of Highways, Transportation and Waste

To: Environment and Transport Cabinet Committee – 29 November 2019

Subject: **Highways Term Maintenance Contract - Position Paper**

Classification: Part 1 Report – Unrestricted

Part 2 Appendix A - Exempt as defined in Schedule 12A of the Local Government Act 1972

Future Pathway of Paper: Cabinet Committee – 13 January 2020

Electoral Division: Countywide

Summary:
This report provides the Environment and Transport Cabinet Committee with:

- The background to the current Highway Term Maintenance Contract
- Work undertaken to date to progress the CSKL delivery option
- An outline of an alternative delivery option
- Details of key timescales and resourcing requirements going forward.

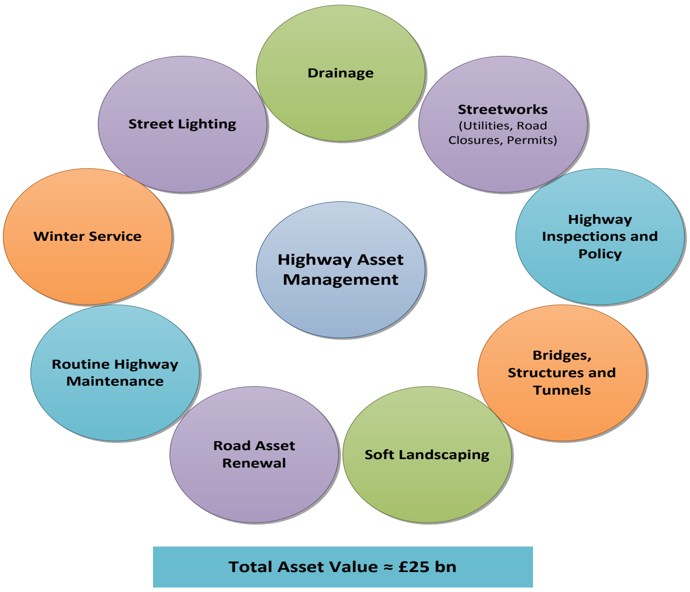
Recommendation:
The Cabinet Committee is asked to note and comment on the report.

1. Introduction

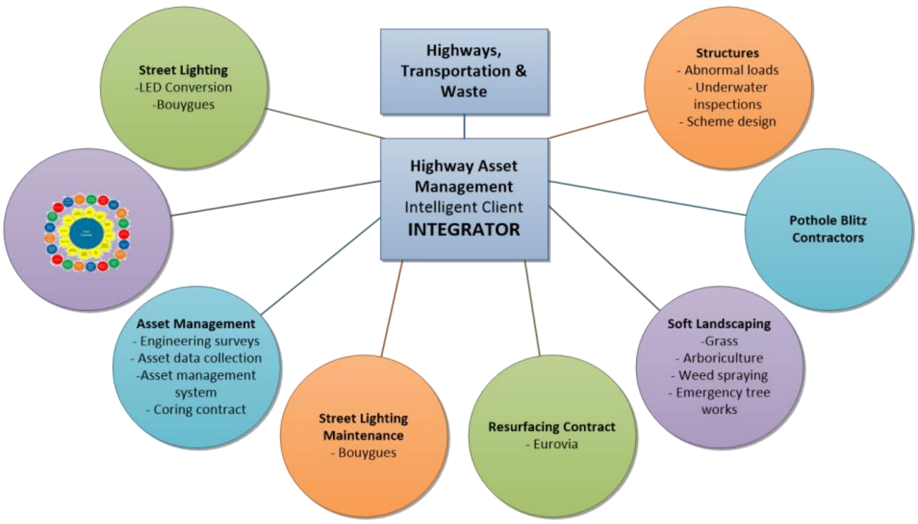
1.1 As presented to ETCC in November 2017, the Highway Term Maintenance Contract (HTMC) is currently delivered by Amey and expires on the 31st August 2020. At the meeting, following a full and detailed commissioning project it was agreed that the HTMC would be extended for 24 months. This was formally ratified on the 10th April 2018 through the Cabinet Members Decision 17/00124.

1.2 During the commissioning project undertaken in 2017, significant officer time and resource was dedicated to reviewing the specifications and contractual clauses in accordance with industry best practice. Much of this work (about 75%) is still current today.

1.3 The HTMC is managed by the Highway Asset Management (HAM) team who are responsible for highway related assets totalling £25bn as shown below:



1.4 As an intelligent client within Highway, Transportation and Waste (HTW), HAM is responsible for a managing a range of different contracts to deliver an effective Highway Services for the public. The HTMC is part of the current delivery model as shown below:



1.5 The range of services included with the HTMC are:

- Routine Maintenance (carriageway & footway repairs)
- Highways Improvement Schemes <£100,000
- Structures Maintenance
- High Speed Road Maintenance - including Traffic Management
- Emergency and Out of Hours Response
- Winter Service
- Drainage Improvements and Repairs
- Patching and Small Resurfacing
- Signs Maintenance and Improvements (non-illuminated only)
- Lining Maintenance and Improvements
- Gully and soakaways and catch pit emptying
- Barrier repairs and maintenance

1.6 A new delivery model is required as the current arrangement is due to expire on 31st August 2020.

1.7 Members have given strong direction that any new delivery model should:

- Take back control
- Change the current provider
- Maximise ‘pounds in the ground’
- Use local SMEs

1.8 Operationally it is also important to:

- Maintain current services levels and customer response times
- Better manage current market price pressures
- Secure statutory services - Emergency Response and Winter
- Improve performance (productivity)
- Enhance intelligent client with efficiencies across whole service
- Continue to access and exploit technology and innovation (R & D)

2. Delivery Options

2.1 Four options for the future provision of these services have been considered, as set out below.

Option 1 –	Extend the contract with Amey for a further year (until August 2021).
Option 2 –	Re-procure on a like-for-like basis.
Option 3 –	Disaggregate the contract and procure smaller contract packages, with the Council taking on the management and integration role.
Option 4 –	A partnering (Highway Alliance) model developed jointly between the Council and Commercial Services Kent Limited (CSKL) under the Holdco umbrella.

2.2 HTW were asked to further explore Option 4 which resulted in KCC and CSKL working together to develop the strategy and produce a Business Case. In addition, a Project Board was set up to provide direction and monitor progress. Membership included:

- HTW HAM
- CSKL
- Corporate Finance
- Human Resources & Organisational Development, and
- Internal Audit

2.3 As part of this business case, CSKL identified that a formal instruction was required prior to the end of November 2019 to allow sufficient time to demobilise the Amey contract effectively before its expiry date and mobilise any new contracts.

3. CSKL Proposal

3.1 The proposal by CSKL was a Highways Alliance to be established through a Teckal organisation within the Commercial Services Group.

3.2 The delivery model would manage the ‘core services’ listed at paragraph 1.5 which would be transferred on the commencement of the new arrangement from 1 September 2020.

3.3 The new Alliance would include the incumbent contractor’s staff and operatives (currently 220), the respective CSKL staff (approximately 10) and the respective KCC HAM team (currently 117 – 46% of total team). All staff would transfer under TUPE into the Teckal organisation on commencement of the new arrangement.

3.4 A business case was developed and submitted to KCC on 5 November 2019.

3.5 In the absence of a formal competitive dialogue, Corporate Finance sought external validation of the business case as a means of due diligence of this key and significant contract. PriceWaterhouseCoopers LLP (PWC) were commissioned to undertake an independent appraisal of the proposal to test the business case against the following criteria:

- Financial viability
- Appropriateness of CSKL as a delivery model
- Timing

4. PWC Feedback

4.1 The full Assessment Report has been included in Appendix A. A summary of the findings is included below:

4.2 Financial Viability

- Sustainability; cost analysis identified low margin on high level of spend with the risk being no margin for error. This would leave a financial risk to KCC, the report questions the sustainability of the proposal.

- Capability; the report raised a question around CSKL current capability to incorporate a multimillion-pound diverse service taking all of the staff and the overhead impact.

- Commissioning; the report challenged the business assertion that CSKL could source better value for money compared to an external provider.

- Start Up Costs; the report noted significant investment would be required to mobilise the service. Furthermore, the ability to deliver tangible savings through transforming and streamlining the services were not detailed over the long term.

4.3 Appropriateness of CSKL as a delivery model

- There is a heavy reliance on key skills and capability required from TUPE'd resources and recruitment which could affect key milestone delivery. This was reflected as their overhead commitment was deemed to be low.

- Progressing through a programme of transformation to redesign the services and streamline process/resources will require significant time and investment.

4.4 Timing

- A number of critical milestones within the project plan are at risk, with mobilisation due to have commenced in November. This puts the September 2020 transfer at risk.

Recommendations

4.5 A formal market engagement process should be undertaken by KCC that encompasses both the external providers which include the local supply chain and SMEs.

4.6 Further consideration should be given to the longer-term transformation plan and the associated impacts.

4.7 Explore the possibility of a staged transition and an extension agreement that see the services move across to the Alliance on an incremental basis.

5. Risks of CSKL Model

5.1 In addition, a risk register (as is usual for all projects) has been prepared by KCC officers, the key risks being:

Ambitious Commencement Date

5.2 A September 2020 commencement date of all services could put key statutory services (winter and emergency response) at risk through October 2020 to May 2021. Examples of local authorities implementing a Highway Service through a Teckal arrangement have shown that it takes 18 to 24 months to deliver so the viability of implementing this delivery model in nine months is unproven.

Service Quality and Reputation

5.3 With the implementation of any new strategic contract on an accelerated programme, there is a risk that service quality may diminish through the bedding in period with the simultaneous transfer of all services. This could last up to six months (to March/April 2021) and could directly affect the Winter Service period.

5.4 The transfer of 46% of HAM staff into the Highway Alliance will break up the intelligent client team which will require a restructure within the HTW directorate.

5.5 Deconstructing the HAM service in this way could impact all services including those beyond the HTMC scope.

Key Personnel (TUPE Transfer Risk)

5.6 The TUPE transfer list will not be confirmed until the date of the transfer which prevents accurate planning for the number of staff that would transfer. It would be unlikely that staffing gaps could be fully backfilled within sufficient time which will put the 2020 winter service at risk.

No Deal Brexit

5.7 A No Deal Brexit still poses a risk over the coming months. There will be a resource strain to prepare for a No Deal outcome at the same time as implementing the Alliance. Both tasks will require the same resources and could be undermined by the transfer of staff into the Alliance.

Key Personnel (Recruitment)

5.8 The highway industry is competitive (demand outstrips labour supply) and a recruitment process could take some time to appoint the suitably qualified and experienced candidates to the Senior Management team responsible for the Highway Alliance. Notice period could be as long as six months.

ICT, Plant and Material Costs

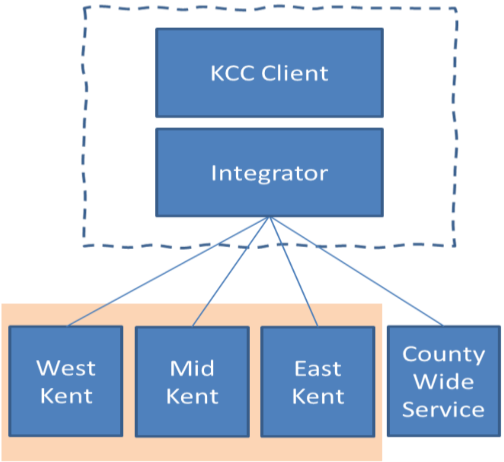
5.9 There will be significant upfront costs to mobilise prior to service commencement, that KCC will be required to fund. This will include plant (e.g. winter service fleet), materials (e.g. salt purchase (£1.25m) and labour (e.g. staffing costs), as well as ICT systems and equipment.

6. Alternative Delivery Model

6.1 Taking the risks in to account, HTW were asked to consider an alternative to the CSKL Alliance model which would in effect minimise risk delivery whilst still achieving the priorities identified earlier at paragraphs 1.7 and 1.8.

6.2 In summary, this model brings forward Option 3 with HAM building on its proven track record as the integrator, directly commissioning services as evidenced in paragraph 1.4. HAM will strengthen their intelligent client function and take back control of the HTMC core services.

6.3 This model would involve HAM undertaking a number of procurements for specific services such as capital drainage works, pothole blitz and drainage cleansing before September 2020. Furthermore, HAM would also consider how core services could best be delivered on a more localised basis, possibly on a west, mid and east Kent basis with specialist services being delivered county wide as shown below



Strengths
Strategic, management and financial cases
Little impact to service delivery
Builds on current HAMS intelligent skills
Systems processes and tools already in place
Maintains Member proximity to service
Reduced cultural change
TUPE risk avoided, transfer directly to suppliers
Salt purchase risk transferred.
Using up to 3 sub-county (2nd tier) local suppliers creates competition and access to innovation
Countywide category management efficiencies
CSKL could bid for specific work packages

Weaknesses
Timescale
Are 3 packages big/attractive enough?
Winter Service and route allocation
Need to assess legal and HSE impact

6.4 However, taking account of restricted timelines and staff risks, it would be recommended that the core services including work following statutory inspections, winter and emergency services would be retained by Amey for the period between October 2020 and April 2021, although the procurement of a new provider(s) will have commenced in the summer of 2020.

6.5 During the previous commissioning project completed in 2017, a significant amount of work was completed to define future specifications, outline service improvements and engage with the market. This invaluable work will reduce the preparation time required before procurement commences.

6.6 Further market engagement would take place in early 2020 to identify which services could be separated from the core contract and how the scope of services could be delivered in the future. After finalising negotiations with Amey, KCC would commence procurement of descoped services prior to September 2020. To preserve winter, day to day and emergency response service delivery, Amey would continue delivering these aspects until June 2021. This will allow for a smooth demobilisation of the contract.

6.7 In the immediate future, it is proposed that KCC seeks an alternative Drainage Capital Works delivery model ready for April 2020. As the delivery is low risk due to the minimal TUPE obligations, KCC will procure a multi supplier framework to deliver these works. This coincides with the increased capital funding allocated for the next three financial years.

7. Benefits and Risks of Option 3

7.1 The benefits of the direct delivery model include:

- KCC has a proven track record of discrete service commissioning and integration. This alternative arrangement avoids breaking up a proven client team. Examples include the Pothole Blitz (10 SME contractors), Street Lighting Term Services (Bouygues) and Road Asset Renewal (Eurovia) contracts.

- Furthermore, the revised timescales reduce the service failure risk of emergency responses and winter service. The opportunity to deliver a managed handover from Amey can be achieved, especially with the management of a potential TUPE transfer of 220 employees.

- This approach will maintain access to innovation within the industry while also strengthening KCC's asset management capability with DfT which directly impacts funding received annually.

- This option also partly mitigates financial pressures in the 2020/21 financial year and reduces setup/mobilisation costs. With the breaking up of the services into individual contracts, KCC can realise its objective to reduce fee-on-fee costs by working directly with contractors, rather than through a third party.

7.2 Multiple core service suppliers will provide competition in procurement and also operational, financial and productivity comparators. However, there are risks and these include:

- There may not be sufficient market capacity to deliver this proposal. The size of the contract may not generate sufficient appetite within the contract and will need to be explored throughout market engagement.

- The allocation of depot resources between multiple contracts could be problematic due to the different level of facilities between main and satellite depots. This will need to be reviewed for the different contracts.

8. Finance

8.1 To mobilise this new service could cost up to £575k. These resources would be required up to June 2021.

8.2 It is expected that any new procurement and delivery model will present a price increase of up to £2.5m. This is unavoidable as future rates will become more in line with the market and KCC's expectations for improved performance and delivery. This uplift has been recorded in the Medium-Term Financial Plan.

8.4 Dependent on when new arrangements are procured, there could be an in-year pressure as services are descoped from Amey to other contractors.

8.5 In addition, there could be a small uplift in contract management costs due to the individual contracts being procured but these will be detailed in the report to cabinet in January.

9. Commissioning Advisory Board (CAB)

9.1 A Highways Term Maintenance Position Paper was presented to CAB on the 20 November 2019.

9.2 The Board were largely supportive of Option 3 but identified the following risks and concerns:

- Contract management risk
- Timescales risk
- Requirement to vigorously test the financial aspects and deliverability of Option 3
- Identify the performance metrics to measure success
- Evaluate the capacity of the market before implementing the strategy

9.3 Corporate Finance and Internal Audit are part of the HTMC Programme Board in order to ensure that risks and costs are taken properly identified and taken into account

9.4 Market engagement to test the capacity will be conducted in early 2020. This will ensure KCC fully understands the supply chain to recommend an appropriate way forward prior to undertaking competitive procurement. This will include reviewing the individual service areas to identify the most appropriate commissioning route.

9.5 It is proposed that regular progress reports are provided to both this Cabinet Committee and CAB.

10. Next Steps

10.1 A report will be presented to Cabinet on 13 January seeking approval to progress a preferred delivery model. The report will also seek appropriate delegated authority for the Corporate Director for Growth, Environment and Transport in consultation with the Cabinet Member for Environment and Transport to commence and conclude specific commissioning and procurement processes.

10.2 A programme to deliver Option 3 has been provided in Appendix B. Key milestones are as follows:

December 2019 – April 2020

10.3 Negotiations with Amey to be finalised to identify those services to remain in the core contract. Identified services will need to be procured prior to September 2020.

10.4 Market engagement to inform and seek approval of the future delivery model post 2020. Considerations of risks including TUPE, market capacity and appetite of options will need to be identified.

10.5 As detailed in paragraph 1.2, the specification and contractual document review will not be as onerous as the work completed in 2017. This work can be updated in accordance with industry best practice prior to the strategy approval. This will minimise the timelines required compared to starting the project from scratch.

10.6 Finalise and seek approval of the procurement strategy to deliver the preferred model of delivery.

10.7 Procure the Drainage Capital Works solution for April 2020.

May – November 2020

10.8 Commence direct delivery of the transferred services identified in 6.1 and 6.3. Start the procurement of the core services contracts. Mobilise and instruct Amey for the delivery of the winter service period for the last time.

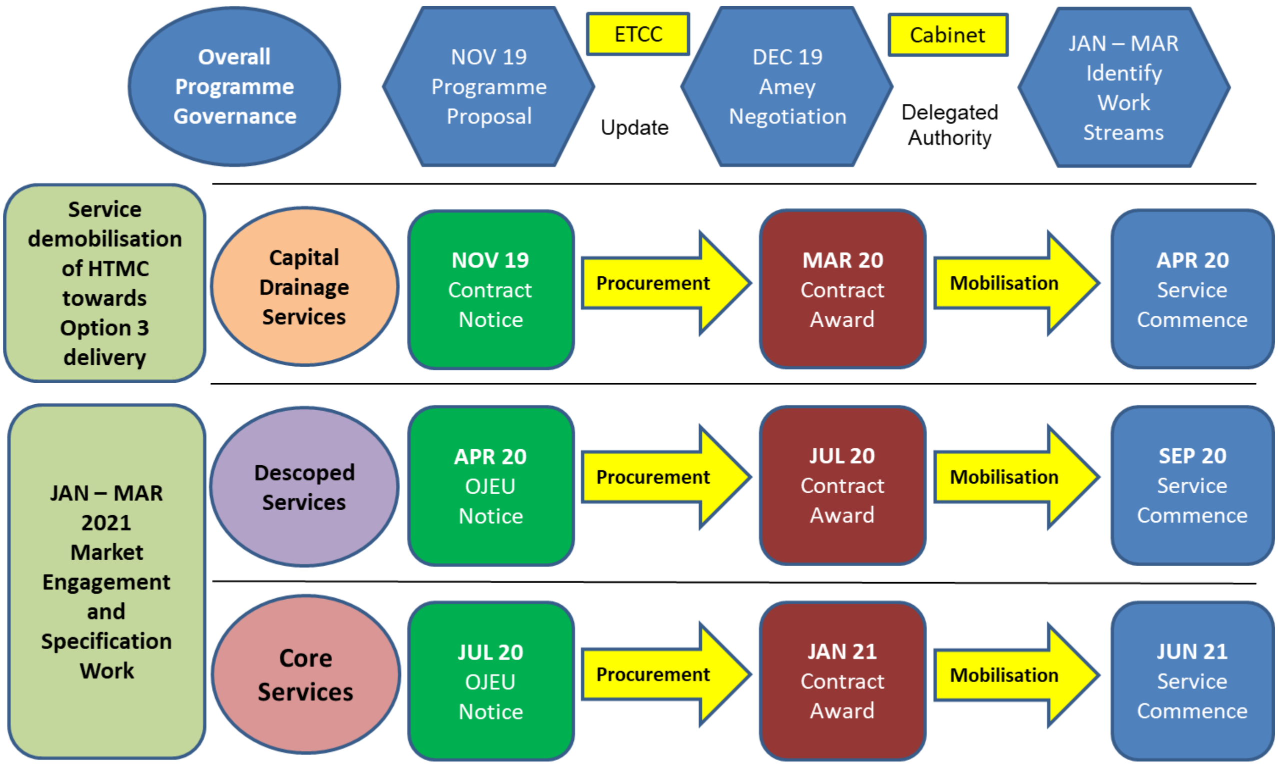
December 2020 – May/June 2021

10.9 Award and mobilise the new arrangements for the winter and emergency contracts. Continue to work with Amey to demobilise their contract.

10.10 Finalise Amey's exit from the Highways contracts and implement the full-service commencement of new arrangement.

10.11 Throughout this whole process there will be regular reviews by Corporate Finance, Human Resources & Organisational Development, and Internal Audit to provide appropriate diligence against the delivery of Option 3.

10.12 An illustration of our short-term programme delivery has been provided below.



11. Recommendation

11.1 The Cabinet Committee is asked to note and comment on the report.

12. Report Author

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