

From: Clair Bell, Cabinet Member for Community and Regulatory Services
Simon Jones, Corporate Director of Growth Environment and Transport

To: Growth, Economic Development and Communities Cabinet Committee 14 May 2024

Subject: Decision to award contracts for Public Rights of Way Vegetation Clearance

Decision No: **24/00034**

Classification: **Unrestricted**
Electoral Division: All

Summary: The vegetation clearance contracts for Public Rights of Way (PRoW) conclude at the end of the 2024 -5 financial year and new contracts need to be put in place. The likely expenditure will exceed £1m. A key decision is therefore required to enable the procurement to proceed and subject to a successful outcome to award contracts for the delivery of PRoW vegetation clearance work.

Recommendation(s):

The Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Community and Regulatory Services to:

- (i) AGREE the re-procurement and the award of new contracts for PRoW vegetation clearance, in consultation with the Cabinet Member for Community and Regulatory Services, for a further period of five years and an allowable extension of two years subject to performance; and,
- (ii) to DELEGATE authority to the Director of Growth and Communities to take other relevant actions, including, but not limited to finalising the terms of and entering into required contracts or other legal agreements, as necessary to implement the decision as shown at Appendix A.

1. Introduction

1.1 The Public Rights of Way (PRoW) network extends to 4,312 miles (6995 Km) and with a small number of exceptions, is publicly maintainable highway. Control of vegetation growing from the surface of the highway (other than crops) is the responsibility of Kent County Council. The work is completed through a mixture of scheduled and ad-hoc responsive work. The scheduled work has been identified over many years through consultation with Parish Councils and analysis of public reports. Ad-hoc work is identified in response to public reports or as a result of inspection. Vegetation overgrowth is the single most reported issue, on the PRoW network, by the public.

- 1.2 The Asset Management Plan 2019 identified that the optimum length of vegetation clearance is 1758802m per annum, below which lengths of the network will be obstructed or unpleasant to use. Obstruction of, or interruption to, access results in an associated loss in public benefit and impact on businesses reliant on the visitor economy. The authority would fail to meet its statutory obligation to maintain the network. The length of PRow cleared does vary reflecting changes to land use and the nature and length of the growing season. Inevitably with a warmer climate we are experiencing longer growing seasons.
- 1.3 Failure to deliver the optimum level of service in the short term would, in addition to the adverse impacts stated above, simply defer the activity with substantially greater costs being incurred at a later date in order to recover the position.
- 1.4 The PRow and Access Service wishes to establish contract arrangements for vegetation clearance that provide access to an appropriate mix of suitably skilled small and medium sized enterprises. It is working with the Commercial and Procurement Team to achieve this.

2. Financial Implications

- 2.1 Based on the current spending on PRow vegetation clearance the anticipated revenue spend over the five years of the contract is £2.125M (£425K pa). Should the option to extend for a further two years be taken the anticipated spend would be £2.975M.
- 2.2 Grounds Maintenance Index 87 (GM87) is used to apply increases to address inflation throughout the length of the contract. Over the course of the current contract this has seen the cost of the contracts increase by approximately 40%; in the main in response to fuel price increases and particularly the fuel price shock in 2022/23. With the exception of 2023 the annual inflation increase has generally been around 6%.
- 2.3 Annual uplifts will need to be built in to the MTFP and funded through the GET revenue budget. The growth pressure for 24/25 is funded. However, if not funded in future years the pressures may only be met through reductions to the programme of vegetation clearance or diminution to maintenance programmes for public rights of way generally.
- 2.4 The proposed arrangement for vegetation clearance is term service contracts with the county divided into 10 lots. The value of individual contracts may be relatively low but given the contract duration of five years and the opportunity to extend for a further two it creates an ongoing commitment to vegetation clearance.
- 2.5 Should the County Council not be in a position to fund the work in future years it may be liable for compensation payments to the successful bidders. The value of any compensation payments reduces over the duration of the contract.

3. Policy Framework

- 3.1 The commission accords with the County Council's Strategy "Framing Kent's Future"
- a) Levelling up Kent: Priority 1:- supporting ambitions to improve the health of Kent's population particularly promoting healthy behaviours.
 - b) Infrastructure for Communities, Priority 2: Invests in Kent's high-quality landscapes, and supports the choice of alternative travel options by prioritising the maintenance of accessible walking routes and cycle lanes
 - c) Environmental step change . Priority 3: Improve access for our residents to green and natural spaces especially in urban and deprived areas and through our Public Rights of Way network to improve health and wellbeing outcomes.
- 3.2 The proposed decision supports Securing Kent's Future: The procurement of vegetation clearance contracts seeks to secure best value in the delivery of what is a statutory function (the maintenance of the publicly maintainable highway). It seeks to deliver this work in the most efficient, economic and effective way, consistent with the prioritisation of the Council's best value duty. In that respect it is consistent with, and supports, Securing Kent's Future.
- 3.3 The commission supports a number of identified policies within the adopted Public Rights of Way Improvement Plan for Kent – 2018-2028. ([Rights-of-Way-Improvement-Plan-2018-2028.pdf \(kent.gov.uk\)](#) **Appendix B**). The plan was produced following wide ranging public consultation and engagement. The importance of having well maintained rights of way was consistently raised by the public and other stakeholders as essential to achieve the positive outcomes for health, well- being, the rural economy and active travel.

4. Procurement Proposals

- 4.1 To help inform the procurement of the PRow vegetation clearance contracts we have engaged with the market and particularly existing specialist Kent and East Sussex based small and medium enterprises.
- 4.2 The outcome of market engagement for vegetation clearance and preparation of the commercial case is a recommendation that the work be split into 10 lots with no individual supplier awarded more than three lots. The recommended contract duration of 5-7 years allows the service providers sufficient certainty to invest in specialist equipment and their labour force. It is expected that this will encourage more local SMEs to bid. The expectation, based on previous procurement, is that four contractors will deliver the contracts. The opportunity for businesses to tender for the work will be published on the Kent Business Portal.
- 4.3 Other options considered but discarded were:
- **Do nothing:** This is not an option. The County Council would not be delivering a minimum level of service to meet its statutory obligations. It would be at risk of third-party action to compel it to undertake the work and at risk of increased numbers of third-party injury claims. The long term costs of maintenance would be increased appreciably.

- **Single supplier contract:** Previous procurement rounds have failed to identify any single supplier that can deliver the levels of clearance required or compete on price other than through sub-contracting with significant implications for quality and reliability. Previous rounds of procurement have not identified a single supplier with the capacity to deliver the programme without sub-contracting much of the work, adding significant risk to the County Council in terms of performance and delivery.
- **Multi supplier framework:** The County Council would not be able to enter contracts of sufficient length that it would be financially and logistically fitting for suppliers. The use of similar frameworks for small works in the past has seen a rapid diminution in the contractors available through the framework.

4.3 An Equality Impact Assessment (EqIA) has been completed for the commission; **Appendix C**. The EqIA identified a number of potential positive impacts from the commissioning and procurement exercise relating to the accessibility of the PRow network.

4.4 Given the potential aggregated spend over the duration of the contract, delegated authority is sought to allow the Director of Growth and Communities to take other relevant actions including, but not limited to, finalising the terms of and entering into required contracts or other legal agreements, as necessary to implement the decision.

5. Legal Implications

5.1 Maintenance of the PRow network is an obligation under the Highways Act 1980 section 41. The contracts contribute to meeting this obligation. Failure to undertake the work leaves PRow obstructed and unusable. There is a risk, should this be the case, that the Council could face action under the Highways Act 1980 sec 56 &/or 130A which, if successful, would result in the Council being compelled to act. Failure to undertake the activity would also increase the risk of third-party injury claims.

6. Conclusions

6.1 The County Council is under a statutory obligation to maintain the PRow network. In order to maintain the network the PRow and Access Service needs appropriate arrangements in place to manage vegetation on the network.

7. Recommendation(s)

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7.1 The Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Community and Regulatory Services to:

- (i) AGREE the re-procurement and the award of new contracts for PRow vegetation clearance, in consultation with the Cabinet Member for Community and Regulatory Services, for a further period of five years and an allowable extension of two years subject to performance; and,

(ii) to DELEGATE authority to the Director of Growth and Communities to take other relevant actions, including, but not limited to finalising the terms of and entering into required contracts or other legal agreements, as necessary to implement the decision as shown at Appendix A.

8. Background Documents

- Appendix A: Proposed Record of Decision
- Appendix B: Rights of Way Improvement Plan [Rights-of-Way-Improvement-Plan-2018-2028.pdf \(kent.gov.uk\)](#)
- Appendix C: Equalities Impact Assessment

9. Contact details

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