

**From:** Simon Jones, Corporate Director of Growth, Environment and Transport

**To:** Neil Baker, Cabinet Member for Highways and Transport

**Subject:** Highway Term Maintenance Service Contract

**Decision No:** 23/00058

**Classification:** Part 1: Main Report Unrestricted  
Part 2: Exempt Appendix – Section 12a Local Government Act

**Electoral Division:** All

**Summary:**

Kent County Council is the Statutory Authority responsible for the delivery of highway services to Kent residents. Many of these services are delivered through a Highway Term Maintenance Contract (HTMC) with Enterprise AOL Limited (known as Amey). The current contract expires on 31 August 2023. Due to market volatility, it is proposed to enter into a new contract with Amey Highways Ltd through the Highway Civils Framework for a 32-month period. During the coming months the service will evaluate all future procurement options for the delivery of highway services and all considerations will be brought back to this committee.

A Key Decision is required to award the 32-month call off contract for this service as the value exceeds £1m.

**Recommendation(s):**

The Cabinet Member for Highways and Transport is asked to:

- a) agree a new contract is awarded to Amey Highways Limited for 32 months under the Highway Civils Framework;
- b) give delegation to the Corporate Director 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; and
- c) agree to the proposed procurement timeline for the replacement contract.

**1. Introduction**

- 1.1 Kent County Council (KCC) is the Statutory Authority responsible for the delivery of highway services for the residents of Kent (excluding Medway). The Highway Term Maintenance Contract (HTMC) is delivered by Enterprise AOL Ltd and the contract is managed by Highways and Transportation (H&T) division.
- 1.2 The current arrangement commenced on 1 September 2011 and has a contract

value of between £40m and £50m per annum split across revenue and capital budgets which is dependent on certain grants and KCC funded elements. Several key services are delivered through this contract including:

- **Winter Service Provision** – i.e. gritting of our major routes during freezing conditions.
- **Drainage Maintenance and Capital Projects** – i.e. gully cleansing and drainage repairs.
- **Structures Maintenance** – i.e. bridge repairs and construction.
- **Patching and Small Resurfacing Services** – i.e. pothole and surface defect repairs.
- **Surface Treatments** – i.e. road and footway surface preservation and life extension.
- **Emergency Response** – i.e. supporting emergency services in response to incidents across the network including weather events and structural failure.
- **Highway Schemes Delivery** – i.e. construction of highway improvement schemes, including those for crash remedial measures and s106 requirements.

## 2. Financial Implications

- 2.1 An overall price increase has been agreed at circa 10% increase on contract prices. Not all rates will automatically be adjusted by this amount as certain rates are well below actual cost and others remain at a sustainable level. There are 29 rates that require specific adjustment to ensure that they can be sustainable for the extension period. These primarily relate to asphalt works that have seen exceptional industry increases in material costs and labour.
- 2.2 The impact of the 10% increase places a circa £5m per annum increase as annual contract throughput has been in the order of £50 million (though this is not guaranteed). This is split between capital and revenue budgets with circa one third revenue to two thirds capital. Expenditure against these budgets areas will be contained and managed within available budget/resource envelope.
- 2.3 Price indexation increases are applied annually to revenue budgets however capital budgets see no such increase. In effect year on year output is reduced to offset the price increases within the capital area of expenditure.
- 2.4 The estimated revenue cost pressure for 2023/02 is £1m. This will be met from in year savings particularly around energy costs with £800k already identified and set aside for this and £400k which was already allocated to meet the additional costs of recommissioning the HTMC.

## 3. Contract Rationale, Options and recommendation

### Contractor Performance

- 3.1 KCC has implemented several commissioning programmes over the past six years. On each occasion the decision has been taken to extend the contract with Amey supported by cost, value and delivery performance.

- 3.2 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.
- 3.3 As part of the arrangements for the new contract, a joint performance steering group will be established to ensure performance improvements, and efficiencies are made in order to closely manage and to hold AMEY Highways Limited accountable for performance issues.

Value for Money

- 3.3 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. Furthermore, that it was within the top four of assessed (FHRG) members within the last 18 months which evidences the performance of this contract for KCC. There is a recommended action plan for further improvements which is current being embedded within the division. (Appendix A).
- 3.4 It is planned to re-engage with FHRG in 2023 to review delivery against the action plan and continue to engage with the wider market to help shape our arrangements beyond the current Enterprise AOL Limited contract.

Technical review

- 3.5 To award the contract under the Framework is not without risk and is reliant on a number of factors to ensure mitigation. This includes:
- Ensure the specifications of the contract fits within the framework scope
  - Framework terms are not materially altered from those set out in the framework
  - Commence a procurement process as soon as practically possible
- 3.6 The majority of the works to be delivered within the contract are included on the CPV codes and Framework specification. Winter service was not considered in scope of the anticipated services under the Framework; however it is difficult to decouple this service from the core contract due to the multi disciplined staff that operate the works during the calendar year.
- 3.7 While the winter service is entwined with the other works, the value of these works falls below 10% of the total contract value. There is an argument that due to the low value of these services compared to the overall value of the works under the Interim Arrangements that this might be considered an insubstantial modification, which is protected as a permitted modification under Regulation 72 of the PCR providing that the majority of the value of the Interim Arrangement will be in-scope works and the value of the winter service requirements stay below both the 15% of the total value.

- 3.8 The contract terms governing the interim arrangement will be based on the NEC4 Term Services Contract which is permitted within the framework. This will incorporate appropriate Z clauses as required.

#### Market Capacity

- 3.9 As previously shared at the 23<sup>rd</sup> May Environment & Transport Cabinet Committee meeting; market intelligence suggests that delaying procurement could be prudent in order to allow the market to stabilise.
- 3.10 The industry is experiencing significant volatility due to the impact and aftermath of COVID-19 and the war in Ukraine. The consequence of these and other market challenges 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).
- 3.11 Local authorities that are procuring new contracts are seeing highly volatile pricing, reduced supplier availability and tenderers seeking both enhanced contingencies and to transfer several critical risks back to the client.
- 3.12 In this climate there remains little confidence that letting a contract at this time would deliver a contract that would be economically advantageous, affordable, or that it would represent best value over the longer-term. It is therefore recommended to award a new contract to Amey Highways Limited via the Highway Civils Framework. However, this is not without risk. See section 4.

#### Options

- 3.13 Two contract periods were considered; 56 months and 32 months during which time the service can undertake a full commissioning of the contract. However, as the contract has been extended several times extending the contract further could pose a legal risk. It is therefore recommended that the award is for as short a period as possible and for a full commissioning exercise to be undertaken immediately.
- 3.14 A 32-month contract will give the service time to evaluate and plan for a full commissioning of the contract however it does result in KCC covering the cost of the assets beyond this period and therefore an increased financial pressure of £200k covered in the MTFP.
- 3.15 The procurement timeline has been identified in section 4. A Prior Information Notice will be published to commence market engagement activity in the autumn.

### **4. Legal Implications and procurement timeline**

- 4.1 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.
- 4.2 The current contract has been extended beyond its original allowable period due

to the COVID-19 pandemic. There is no scope to extend the current contract legitimately in accordance with the Public Contract Regulations 2015.

- 4.3 Due to forthcoming Brexit Transition works, the Council implemented a Highway Civils Framework for which Amey OW Limited was successfully appointed. Due to a restructure within the Amey Group, the Framework will be novated to Amey Highways Limited, as permitted under the Public Contracts Regulations. Officers in strategic commissioning have checked and confirmed that Amey Highways Limited meet the selection and qualitative requirements used when the framework was established. Legal advice has confirmed that this Framework can be used to award this contract to Amey Highways Limited but it is not without risk. The full legal advice has been included in the exempt Appendix.
- 4.4 To procure a replacement term maintenance contract is both complex and time consuming. Under normal circumstances, this process would be expected to take over 27 months. Whilst the below provides some detail on the expected stages and duration of the programme, there remains the need to align this schedule to the democratic decision and governance processes which could affect some of the durations stated:

Formal Market Engagement – 6 Months  
Selection Qualification (SQ) Process – 1 Month  
SQ Evaluation and Approval – 2 Months  
Initial Tender Period – 3 Months  
Initial Tender Evaluation and Shortlist – 3 Months  
Negotiation Period – 2 Months  
Final Tender Period – 2 Month  
Award Process – 2 Months  
Mobilisation Period – 6 Months

## **5. Equality Implications**

- 5.1 An Equalities Impact Assessment has been carried out and no implications for extending the contract have been identified.

## **6. Governance**

- 6.1 The proposed decision delegates authority to 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.
- 6.2 A Steering Group will be established comprising KCC Senior Managers to provide oversight and governance for the evaluation of options to deliver highway services ahead of proceeding to the full commissioning process; this will include all options.

## **7. Conclusions and next steps**

- 7.1 To ensure that KCC is able to meet its statutory obligations as the highway authority it is proposed to continue to use Amey Highways Limited to deliver services as

defined in the HTMC for 32 months, starting on September 1<sup>st</sup>, 2023, by calling off from the Highway Civils Framework.

- 7.2 This will allow the highways market time to re-stabilise after a period of fluctuation and volatility to enable an organised and market wide competitive re-procurement of the delivery of highways services.
- 7.3 The market will be informed of the decision through a Contract Award Notice.
- 7.4 The contract will need to be finalised and signed by both parties. The Specification will be broadly based on the current contract specification and will include a Parent Company Guarantee. LGPS Admission will be sought by Amey Highways Limited, and an appropriate Admission Agreement and Guarantee/ Bond put in place.

## **8. Recommendations**

- 8.1 The Cabinet Member for Highways and Transport is asked to agree to:
  - a) agree a new call off contract is awarded to Amey for 32 months, via the Highway Civilis Framework, with commencement date of September 1<sup>st</sup>, 2023;
  - b) give delegation to the Director of Highways & Transportation 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; and
  - c) agree to the proposed procurement timeline for the future replacement contract.

## **9. Appendices**

- Appendix 1: Record of Decision
- Appendix A: Future Highways Research Group Report and Action Plan
- Equalities Impact Assessment
- Exempt Appendix: Legal Advice

### **Report Authors**

Haroona Chughtai, Director of Highways and Transportation  
[Haroona.Chughtai@kent.gov.uk](mailto:Haroona.Chughtai@kent.gov.uk)  
03000 412 479

Andrew Loosemore, Head of Highways  
[Andrew.loosemore@kent.gov.uk](mailto:Andrew.loosemore@kent.gov.uk)  
03000 411 652

Robert Clark, Procurement and Commercial Manager  
[Robert.clark@kent.gov.uk](mailto:Robert.clark@kent.gov.uk)  
03000 415 951

### **Relevant Corporate Director**

Simon Jones, Corporate Director, Growth, Environment and Transport

[Simon.jones@kent.gov.uk](mailto:Simon.jones@kent.gov.uk)  
03000 411 683