

Cabinet – 14 December 2016

Procurement of the Highway Repair and Maintenance Contract

Portfolio: Councillor Lee Jeavons (Deputy Leader) –Regeneration

Service: Planning, Engineering and Transportation

Wards: N/A

Key decision: No

Forward plan: No

1. Summary

- 1.1 The Council currently has a contract with Tarmac Limited for the provision of highway maintenance service delivery which commenced on 1 May 2009.
- 1.2 Originally the contract was for a period of 4 years, expiring 30 April 2013, with options for the Council to extend for a further two years at that point and again for another 2 years in April 2015.
- 1.3 At meetings of Cabinet in July 2016 Cabinet gave authority to pursue the tendering of the Highway Maintenance and Repair Contract as set out in the recommendations, exploring opportunities to incorporate additional services.
- 1.4 This report seeks delegated authority to enter into a transitional contract with the existing supplier, Tarmac Limited, in order to allow time to fully explore available options and complete a robust competitive tender exercise for the award of new contracts from 1 May 2018.
- 1.5 The report also seeks delegated authority to enter into the new Black Country Framework Contract for minor works.

2. Recommendations

- 2.1 That Cabinet delegate authority to the Executive Director for the Economy and Environment, in consultation with the Portfolio Holder for Regeneration, to consider and negotiate the terms of a transitional contract and related documents for the provision of Highway Repair and Maintenance Services, with Tarmac Limited, which represents the most favourable terms for the Council.
- 2.2 That Cabinet delegate authority to the Executive Director for the Economy and Environment, in consultation with the Portfolio Holder for Regeneration, to approve the award of a transitional contract and related documents to Tarmac Limited, for the provision of Highway Repair and Maintenance Services, from 1

May 2017 to 30 April 2018, pending completion of the previously agreed competitive tender and award of new contracts.

- 2.3 That Cabinet delegate authority to the Executive Director – Economy and Environment, to sign and authorise the sealing of contracts, deeds or other documents, in relation to the transitional contract referred to in Recommendation 2.2 of this report.
- 2.4 That Cabinet delegate authority to the Executive Director – Economy and Environment, in consultation with the Portfolio Holder for Regeneration, Procurement and Legal Services, to sign and authorise the joining of the new Black Country Framework contract for minor works.

3. Report detail

- 3.1 In the July report Cabinet were reminded of the importance of a healthy and efficient highway network and were informed of the options in relation to the delivery of the Highway Maintenance Service.
- 3.2 Cabinet subsequently approved the pursuit of a new contract in a similar scope and scale with the option of exploring the range of services the contract included. The very detailed procurement and contract documents are being developed on this basis and are now in an advanced stage.
- 3.3 On the 28 October 2016 the new Code of Practice “Well-Managed Highway Infrastructure” was published by the Department for Transport (DfT). Whilst not strictly a legal obligation, the 240 page document is used as a benchmark to judge Highway Authority performance. This is especially important in matters such as claims for injuries and damages made against the Council and in demonstrating efficiency and effectiveness in self assessment. These represent significant risks to the Council in terms of liability and the Council’s ability to secure capital funding.
- 3.4 The new code places a great deal of importance on the overall Asset Management practices employed by Highway Authorities. In addition it requires Councils to collaborate with its peer and neighbouring authorities to ensure respective strategies are aligned. Highway Officers need to understand what the impacts of this new guidance is and how the new contract needs to be constructed and refined in order to comply with it. There is also an opportunity to explore the potential for including more of the asset management role within the contract.
- 3.5 The Highway Maintenance Efficiency Programme (HMEP) is a government sponsored project aimed at developing and promoting best practice in the industry. In preparing tender and contract documents officers have had regard to their guidance documents. The “Standard Form of Contract for Highway Maintenance” was updated in October 2016 and again time is needed to ensure that this national guidance is incorporated where appropriate.
- 3.6 The current contract with Tarmac expires on 30th April 2017. Given the detailed stages of the tendering/procurement process it is unlikely that this could be

completed by this time. This would especially be the case if a different company win the contract which would then require a reasonable handover and set up period.

3.7 West Midlands/Black Country Framework Contract for Minor Works

- 3.7.1 The existing West Midlands Framework Contract for Minor Civil Engineering Works terminates on the 31/12/2016. Cabinet authorised joining this framework at its meeting of 11 December 2013.
- 3.7.2 The replacement Contract (now called the Black Country Framework) has been legally procured by Sandwell Council on behalf of the four Black Country Authorities and Transport for West Midlands (TfWM). It commenced on 1 November 2016 for a period of three years, with an option to extend for a year depending on performance.
- 3.7.3 The Framework Agreement can be used for the provision of highways, transportation and minor civil engineering construction works including minor highway works, public realm enhancements, work on bridges and highway structures, traffic management work, resurfacing and reconstruction, transport related projects and other public infrastructure work.
- 3.7.4 Continuing to be part of this regional arrangement can provide for the delivery of schemes outlined in above as well as offering alternative delivery of certain schemes outside the Highway Repair and Maintenance Contract.

4. Council priorities

- 4.1 Sound transportation infrastructure clearly assists existing businesses and will attract investment nurturing economic growth and the creation and retention of employment. This has been specifically recognised by government in recent maintenance grant awards.
- 4.2 The condition of the highway also has a major impact on people's health and wellbeing. Safe carriageways and footways reduce the potential for accidents and associated injuries. In addition independence for older people, the infirm and disabled is enhanced.

5. Risk management

- 5.1 The condition of the highway and the inspection and maintenance regimes in place affect the potential exposure of the Council to insurance and compensation claims. If the Council does not undertake its statutory maintenance functions in a reasonable manner then it can clearly be held accountable for third party loss or damage as a result.
- 5.2 There is a risk that negotiations with Tarmac will fail to produce viable terms and conditions for an Interim Contract. In this case there is a risk to some business continuity however this could be mitigated by use of services available through the Framework Contract discussed in paragraphs 3.7.1 – 3.7.4.

6. Financial implications

- 6.1 The total budget available for the highways maintenance contract for 2016/17 is £9.3 million. This includes some revenue budgets for reactive maintenance, winter service and road gulley maintenance etc. The majority is however made up of several sources of Capital Investment including:
- Council Mainstream Capital (including capital replacement of revenue savings)
 - Challenge Funding ending March 2018 (including 11% local contribution from Capital funds)
 - DfT Maintenance Block funding
 - Additional £140,000 Pothole funding from DfT (2016/17 only)
- 6.2 External capital grants are subject to strict conditions restricting their use for Highway Maintenance only and the requirement to demonstrate that they have not been used to replace existing Highway Maintenance revenue or capital budgets.
- 6.3 Dependant on budgetary arrangements the total value of the 12 month transitional contract would be approximately £7m.
- 6.4 There is a proposed saving included in the budget of £150,000 based on the re-procurement of the HRM contract. Should this saving not be achievable through efficiencies within the transitional contract this could lead to a reduction in the level of service provided.
- 6.5 Cabinet should note that as any new contract still requires work, with the potential to split off reactive services from pro-active repair/resurfacing parts of the contract specification, it is not possible to go out to the market at this time. Cabinet should further note that the transitional arrangements will be subject to full Council approval of the 2017/2018 budget and so appropriate financial provision would need to be made within the service area's budget to realise them, ensuring service continuity. In the event of the budget not being approved, immediate termination of the transitional arrangements would be sought.

7. Legal implications

- 7.1 Under section 41 of the Highway Act 1980 the Council has a duty to maintain the highway which is carried out at public expense.
- 7.2 As a result of a new Code of Practice "Well-Managed Highway Infrastructure", and the renewal of the HMEP standard Contract guidance in October 2016, further time is required in order to factor the necessary changes into the future contract. A transitional contract is therefore required to ensure continuity of service especially the winter maintenance service, pending the publication and completion of a compliant EU tender.

Action will need to be taken to minimise risks of legal challenge associated with the award of transitional contracts. In order to minimise such risks Procurement and Legal Services advise that transitional contracts should only be used for the

shortest possible practical period and must run concurrently with the re-tender/procurement exercises.

Care and diligence will need to be taken when negotiating the terms of any transitional contract in order to ensure compliance with Public Contract Regulations and minimise financial and operational risk to the Council.

The service area will continue to seek the advice of Procurement and Legal Services, who will assist with using the most appropriate procedures and documents.

The service area will also continue to liaise with Procurement and Legal Services in terms of signing up to the West Midlands Framework Contract for Minor Works, noting that as part of this shared service arrangement Sandwell Council has sought expert advice during the procurement stages for this contract.

8. Property implications

- 8.1 At present Tarmac Limited have a lease on the depot at Apex Road which is owned by the Council. The extension would continue with existing arrangements.

9. Health and wellbeing implications

- 9.1 As indicated in paragraph 7.1 the responsibility for maintaining the highway is a statutory duty of the Council. The ability to do this impacts on health and wellbeing in two ways. The condition of the highway contributes directly to the potential risk of accidents and injury. In addition the economic wellbeing of an area and its relative employment rates have clear health impacts.
- 9.2 A smooth and efficient highway network is a recognised essential contributor to a region's economy and is reflected in the governments Challenge funding for the region.

10. Staffing implications

- 10.1 If the recommendations set out in this report are agreed by Cabinet then there are no direct staffing implications for the Council.

11. Equality implications

- 11.1 A well maintained highway network is essential to the safe and efficient movement of all members of all communities including all residents, businesses, and commerce and is an essential contributor to the economic wellbeing and regeneration of the borough.

12. Consultation

- 12.1 This report has been discussed with Finance, Legal, Risk and Insurance, Development and Delivery, Procurement and Clean and Green whose comments have been considered and incorporated where appropriate.

Background papers

Cabinet Report – 27 July 2016 Review of Highways Repairs and Maintenance Contract & Future Delivery Options

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