Agenda item 10

Cabinet – 27 July 2016

Review of Highways Repairs and Maintenance Contract & Future Delivery Options

Portfolio: Councillor Lee Jeavons (Deputy Leader) –Regeneration

Service: 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 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 April 2012 and September 2014 the Council agreed to both two year extensions which effectively takes the contract to April 2017. There is no further option to extend the contract beyond this point and the Council now needs to decide how it wishes to pursue procurement of future service provision.

1.4 This report compares the options available and seeks resolution to proceed with the recommended procurement route.

2. Recommendations

2.1 It is recommended that Cabinet approve the tendering exercise for the Highway Repair and Maintenance services, exploring the potential for either separate smaller tenders for select services and for the service as a whole.

2.2 Cabinet to approve the exploration of the potential to include additional services and receive a further report on this basis in September 2016.

3. Report detail

3.1 Walsall Council has a statutory duty to maintain around 528 miles (850km) of highway network, excluding the M6 motorway and the A5 trunk road. This network has an asset replacement value in excess of £1.5 billion which makes it by far the most valuable asset owned, managed, and maintained by this authority.

3.2 Maintaining the condition of the road network and improving transport links are core objectives of Central Government strategy, policy, and guidance. The Council has locally adopted a significant number of well established key themes and recognised best practice since the release of the Government's Transport for 2010 vision, including: The Audit Commission's Going the Distance, achieving better value for money in road maintenance (2011); The Highways Maintenance Efficiency Partnership, Prevention is Better than Cure, Potholes Review (2012) and its follow up report 2013; The All Party Parliamentary Group on Highway Maintenance 'Managing a valuable asset, improving local road condition' (2013). Most recently the Department for Transport's (DfT's) principles for the Highways Maintenance Funding Incentive Elements have been integrated within Asset Management planning processes to deliver more effective network maintenance practices.

3.3 The Asphalt Industry Alliance, Annual Local Authority Road Maintenance (ALARM) Survey 2015 confirmed the view of local authority experts nationally:"That the level of shortfall between what highways engineers need to maintain their roads properly and what they actually receive has decreased substantially over the last two decades." Furthermore, "One in six of our roads is classed as being in poor condition and local authorities still need over £12 billion to bring the network up to scratch, and the average length of time it would take to clear this maintenance backlog nationally is 12 years".

The key findings of the 2015 ALARM survey for England identified:

- Percentage of authorities responding – 53%
- Shortfall in annual road structural budget – £428m
- Average annual budget shortfall per authority - £3.7 million
- Percentage of budget used on reactive maintenance – 23%
- Estimated time to clear carriageway maintenance backlog – 12 years
- Estimated one-time catch-up cost - £10.7 billion
- Estimated one-time catch-up per authority - £93 million
- Percentage of authorities reporting unforeseen additional costs – 31%
- Average additional cost per authority - £5.7 million
- Frequency of road resurfacing (all road classes) – 64 years
- Number of potholes filled over past year – 2,380,730
- Average number filled per authority last year – 20,702
- Average cost to fill one pothole - £52
- Total spent filling potholes in past year - £124.4 million
- Amount paid in road user compensation claims - £20.2 million
- Average number of utility trenches over past year per authority – 15,776

3.4 The Council has proactively worked through the Strategic Transport Plan for the West Midlands and has collaborated with neighbouring districts to develop a regional business case identifying sustainable future maintenance investment needs for classified roads. Through its approved Highways Maintenance Strategy (2015-18) and Highways Asset Management Plan (2015-21) this Council has strived to improve the delivery of the Highways Repair and Maintenance services across the borough by using longer term strategies to develop forward works programmes around more robust prioritisation and lifecycle planning methodologies. Together with other examples of innovation mentioned in this report this approach has helped us drive and demonstrate Value for Money gains.

3.5 The total budget for highways maintenance works delivered through Tarmac Ltd during 2015/16 was circa £9 million, consisting of Council mainstream capital, revenue and DfT Maintenance Block and the first of a three year DfT Challenge Fund Investment. Walsall's network as a whole reflects the findings of the ALARM survey and the borough is suffering from a lack of investment from Central Government. The decision to outsource the highways maintenance service back in 2009 and the acknowledged additional capital injection for classified roads via the challenge fund has helped to offset the impact of under investment to some degree, but despite this efficiency gain the Council's key national and local performance indicators have continued to decline in the case of its unclassified roads and all categories of footways.

3.6 Public opinion on the importance of a sound highway condition was acknowledged within the National Highways and Transportation (NHT) satisfaction survey 2015, where the public of Walsall ranked highways maintenance at 96.1% in its overall importance as a public service.

3.7 Against this backdrop it is even more vital that the Council make the best use of its resources and in particular secure the greatest quality and value it can from its contractual arrangements. Highway maintenance is currently delivered through a wide ranging contract with Tarmac generally incorporating the following:

- Structural Repair of footways and carriageways
- Minor highway improvements
- Reactive highway repairs
- Winter Service
- Emergency out of hours service
- Road Markings
- Gully and stream cleansing

3.8 The initial contract with Tarmac was for a period of four years running from 1 May 2009 to 30 April 2013 with the option of extending for two years from 2013 to 2015 and again from 2015 to April 2017. Following consideration of both public and private reports the Council utilised both of these extension periods. There is however no further option to take the existing contract beyond April 2017.

3.9 There are clear areas of excellence in the contractor's performance not least of which is the planned resurfacing section. This is one of Lafarge Tarmac's core

business operations and their experience has produced some first rate resurfacing projects across the borough.

3.10 The winter service and emergency out of hours response benefit from the contractor's operational arrangements. The same staff and vehicles are utilised spreading resource and fleet costs.

3.11 The gulley maintenance service has been improved dramatically over the last 3 years. The Council now has a defined cyclic programme of works which has seen nearly every one of the 35,000 highway gullies in the borough cleaned. Information is added to a live asset database giving the engineers much greater knowledge and control over the process. This project won the 2014 AGI Award for 'Best use of Geospatial for Business Benefit'.

3.12 Contractor performance in relation to reactive maintenance and repairs has historically been the least consistent aspect of the contract. There is a perception that defects are identified and marked out but the actual repairs are taking a substantial time to complete. Work has been ongoing to develop and improve this area of the service which has seen incremental progress. Through a LEAN exercise the way in which potholes were repaired was changed in favour of a permanent repair. This saw the introduction of the Road Mender Vehicles and work has been ongoing in monitoring and maximising their productivity. This process is used by Department for Transport as good practice. There is an established Contract Board made up of the Portfolio Holder and senior managers of Tarmac and the Council who routinely monitor Key Performance Indicators across the service. A further key example is the use of the Velocity Patcher recently introduced through the Tarmac contract and used extensively across the borough.

3.13 In general terms the operational relationship between the Council and Tarmac has matured well over the last few years. This has enabled an atmosphere of mutual support where processes have been developed and refined leading to efficiencies both within the Council and with the contractor. A series of joint workshops and focused task groups have been looking at specific development projects, such as the production of Quality Manuals, Innovative techniques and process improvements. The outputs from these groups have been used for process improvements and refinement of the suite of agreed Key Performance Indicators monitored by the Board.

3.14 Additional benefits, including those emergent from Tarmac's corporate social responsibilities, delivered by the existing working arrangements can be summarised as:

- Employment by Tarmac of Apprentices recruited from Walsall's looked after children (one of which was recognised in the APSE Apprentice of the Year Awards 2016).
- Sourcing and employment of local sub contractors and local suppliers such as Jordans and Hilton Main Construction
- Together with Officers Tarmac support the Area Panels where representatives either attend or work with the Council's Area Managers to offer support to community projects/aspirations and addressing local issues and concerns.

- The provision of spare materials and free plant and labour to community projects such as the resurfacing of the Grange Playhouse and the construction of an earth oven at Blackwood Primary School.
- Contribution to events such as the Caldmore festival with the provision of fencing and traffic management.
- Contribution to local charities most recently St Giles Hospice.
- Exceptional Health and Safety Record having no lost time injuries on the Walsall contract.
- Tarmac use the Council's fleet services for vehicle provision, servicing, repairs Mot's etc. as opposed to external providers meaning that this aspect of the contract spend comes back into the Council.

3.15 Tarmac has been able to deliver significant savings to date. Please refer to section 6 below.

3.16 Options Appraisal

3.17 In assessing the strategic options available to the Council, Engineering and Transportation engaged the services of a leading independent engineering contract consultancy to assist in the process. The consultant in question was involved in the original procurement exercise, has been instrumental throughout the course of the ongoing contract, and has advised on such procurement matters both nationally and internationally. The appraisal below builds on the report produced by this consultant during 2014 during the consideration of the final contract extension.

3.18 The Council does not have a 'do nothing option' as the current contractual arrangement will come to an end in the first quarter of 2017. In essence there are only a small number of options that offer a realistic strategy for delivery.

3.19 It is not proposed to pursue a Private Finance Initiative (PFI). The PFI is a complex form of Public Private Partnership which attracts capital funding from central government in the form of PFI Credits and investment from private companies. WMBC has experience in this type of procurement in its street lighting arrangements with Amey. It is highly unlikely the value of the HRMC alone would be sufficient to attract bidders unless a complex scheme is developed to include the backlog of repairs required on the network. This would form a considerable body of work with commensurate cost and time implications. It is understood that in the current market attracting such significant private investment is highly unlikely and officers are not aware of any such offers from Government.

3.20 The options that have been considered further are:

1. Tender for the Highway Repair and Maintenance Contract (HRMC) in a similar format for the current functions.
2. Increase the scope of the contract to incorporate other services.
3. Tender for the HRMC in smaller contracts.
4. Create an in-house provision by in-sourcing (together with use of available frameworks)

3.21 Option 1 Retender the HRMC in a similar format.

3.22 As demonstrated above the existing contractual arrangements have delivered significant benefit to the Highway Maintenance service. The relationship is now mature and developed allowing process improvements, better quality and efficiency. There are clear areas of excellence and there has been a degree of market testing rates against an existing regional framework. This demonstrated that the rates currently offered by Tarmac are very competitive however this needs to be viewed in context of fixed charges associated with contractual management. This aspect of the contract is a fixed monthly charge that covers expenditure associated with fleet provision, contract management and supervision, fleet requirements, IT and office accommodation and storage and depot requirements. Although we would still have to provide the majority of these aspects if for example the service was in-sourced, separating them from unit costs can make them appear artificially low when compared with others.

3.23 This arrangement does have a cumulative benefit where infrastructure costs can be shared. We use the same depot, vehicles and manpower for delivery of the winter maintenance programme. This allows us to deliver this service for approximately a third of the cost of our neighbouring authorities.

3.24 The cost of retendering a contract of this scale is estimated to be in the region of £100,000 in terms of external expert help and internal officer time. In addition, it will take a huge amount of Council resources which will potentially impact on service delivery during this process..

3.25 The Council faces some challenging financial decisions and we do not know what the available budgets will be over the next few years. The current contract is inherently flexible with no minimal obligation.

3.26 The Building Cost Information Service (part of the Royal Institute of Chartered Surveyors) predicts a rise in civil engineering costs of, 6.5% in 2016 and 6.1% by Quarter 3 of 2018 largely due to a predicted recovery in the cost of oil.

www.rics.org/uk/news/news-insight/news/civil-engineering-tender-price-index-revised

Given that the contract will be 8 years old when it is replaced it is likely that the rates for services will increase effectively reducing what we can deliver for existing budgets.

3.27 Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) staff employed by the contractor will be required to transfer to the new undertakers. Dependent on the options chosen this could involve taking identified staff back into Council employment.

3.28 DfT has awarded Walsall Council several significant highway maintenance grants to repair potholes and resurface a substantial amount of our strategic network. We are obliged to report how we have used this money and how it has complimented existing budgets. Our relationship with Tarmac has permitted us to procure innovative and high value techniques which we need to see through in the forthcoming years.

3.29 In addition to the budgets mentioned in 3.5 Walsall Council benefits from the existing contract rates to deliver small and medium road improvement schemes. The size and scale of the contract is therefore likely to attract the major contractors in the field.

3.30 There has been an expression of intent across the West Midland authorities to secure a single contract for Highway Maintenance as part of the Combined Authority negotiations. This will not be in place by the time the existing HRMC expires in April 2017. It is however suggested that if it is decided to retender for the services as they are then options are included to end or extend the contract at certain key stages to retain flexibility and reflect the regional aspiration. There is a balance to be struck however in that it is likely to attract more favourable rates if there is a degree of certainty to the length of the contract. It is therefore suggested that we tender for a similar 4+2+2 contract if this is the desired option.

3.31 Tarmac has expressed clear intent on re-bidding for the contract. There is of course no guarantee that they will be successful. In Volume 1 of the Tarmac Tender Section 2 item 4 is the required cessation plan setting out how Tarmac will facilitate handover. It envisages that the contractor will actively work with any incumbent service provider to smooth any transition. This would require careful management to avoid adverse consequences or impacts on delivery.

3.32 Future budgets are at best uncertain and are highly likely to reduce. Potential contractors are likely to incorporate the risk of significantly reduced turnover in to their rates and the potential for the Council to recoup net savings over and above what are offered by the contract is reduced by this uncertainty.

3.33 Walsall Council Officers play an active role in regional groups and forums. There exists several regional Framework Contracts that Walsall has access to for both civil works and professional services. Whatever option is chosen the ability to utilise these frameworks to support and complement our service will be retained.

Advantages:

a) Potential for economies of scale, joint efficiencies such as combined service delivery teams and sharing of resources and equipment (a clear example is the current arrangements for winter service that utilise the same workforce and multipurpose vehicles).
b) Ability to incorporate flexibility into the contract to accommodate for changing budgetary arrangements and regional procurement initiatives.
c) Ability to improve on the knowledge and experience developed by running a contract of this nature for the last 7 years.
d) Provision of certainty and ability to develop mutual relationships ultimately improving quality and efficiency.
e) Potential extension of the benefits already delivered as exampled in 3.9-3.13.
f) Ability to build on process improvements already delivered.
g) Maximise the use of areas of excellence
h) The service has existing contract documentation such as specifications etc which have been refined over the course of the contract.
i) Opportunity to embed social value and community benefit in the procurement process ensuring that our local residents benefit at all levels of the scheme.

Disadvantages:

a) Requirement to TUPE transfer identified staff
b) Costly and demanding procurement exercise.
c) Some smaller (possibly local) contractors may be precluded from tendering by Incorporation of the large scale resurfacing element.

3.34 Option 2 To Tender for the HRMC and include other services currently provided by the Council.

3.35 There is potential to include other services within the same tendering process. At this stage there is no firm proposal as to what services should be included/excluded however the recommendations in section 2 include the flexibility to increase the scope of the tendering exercise.

3.36 It is necessary to start the advertisement process (acknowledging the flexibility required to incorporate further functions if necessary) in order to achieve the desired timescales. The options and opportunities presented will be explored further and a specific report will be taken to Cabinet in September 2016.

Additional advantages:

a) Increases the potential for economies of scale.
b) Increases potential for efficiencies, joint working and collaboration
c) Could potentially fit both scenarios of smaller contracts or one large one

Additional Disavantages:

a) The service areas not currently incorporated in the contract will potentially involve additional and fresh TUPE arrangements
b) Could complicate and extend the procurement process as there is unlikely to be established specifications etc.

3.37 <u>Option 3 Tender for the HRMC in smaller contracts.</u>

3.38 Similar advantages and disadvantages exist in this option in terms of the tendering process however it may be more protracted in terms of officer time.

3.39 Additional Advantages:

a) Opens up the tendering to smaller contractors

Additional Disadvantages:

a) Danger that some of the services become disjointed and labour intensive to ensure compatibility and complimentary delivery especially with minimal internal staff available in-house.
b) More cumbersome procurement process. As an example TUPE would be difficult where operatives have undertaken a multitude of tasks (out of hours cover, area crew works, drainage works, winter maintenance call outs).

c) Less opportunity to benefit from economies of scale/efficiencies of integrating functions/workforce.

3.40 It is possible to tender in a way that permits either separate or joint bids having the benefit of exploring the potential efficiency savings of having one large contract and what smaller contractors could offer the service. This would effectively allow examination of the benefits of both options 1 and 3.

3.41 Option 4 Create an in-house provision by in-sourcing (together with use of available frameworks or a separate resurfacing contract)

3.42 A further option is to form a hybrid service where certain functions are brought back into the Council and existing frameworks or smaller contracts are used for the remainder of the service.

3.43 There are clearly similar risks, advantages and disadvantages as Option 2 with the additional issue that staff that were out-sourced in 2009 as part of the original contract would need to be brought back to direct Council employ. Part of the original driver for outsourcing these functions was the fact that there were historical issues associated with the performance of this workforce. The operation of the contract has brought in national expertise to the benefit of the service.

3.44 There would be in excess of 40 staff who would need to be transferred back to the Council, some with their previous Council terms and conditions intact and others that are on Tarmac Ts&Cs.

3.45 Advantages:

a) Ability to redefine what is contracted out and revisit the scope and specification of those aspects of the service
b) Establish direct control of the reactive maintenance function
c) Reduced contractor profit

Disadvantages:

a) Disruption to service
b) Impact on Council Resources
c) Inevitable reduction in delivery during wind down and set up/familiarisation times
d) Potential risk to delivery of grant funded works
e) Time and resource required for TUPE arrangements.

3.46 Conclusions

3.47 The Council does not have a “do nothing” option and has to replace the existing HRMC.

3.48 Whilst the Council will inevitably have to manage the transition from the existing contractor to whichever new arrangements it chooses to implement the process will demand careful management.

3.49 In order to progress the complex task of procurement and have the new arrangements in place within a reasonable timeframe, Cabinet approval is needed to pursue the course of action recommended below.

3.50 It is therefore recommended that Cabinet approve the whole scale tendering exercise for the Highway Repair and Maintenance services as set out in 3.7, exploring the potential for either separate smaller tenders for select services and for the service as a whole. Officers will continue to work with Legal Services and Procurement to ensure that the flexibility to incorporate more functions is retained should the decision to follow this option be chosen when Cabinet receive a further report in September.

3.51 It should be noted that given the complexities and scale of a tendering exercise of this nature it is possible that the procurement process will extend beyond the end of the existing contract (30 April 2017). In order to secure continuity of service it is possible to extend the existing contractual arrangements if necessary, given that we are moving from one OJEU compliant contract to another.

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. The Council remains committed to creating the conditions for businesses to grow and supporting its residents into employment, and the highway maintenance contract will be expected to support delivery of these priorities.

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.

4.3 The Social Value Act allows the Council to align its procurement process to ensure that social value is at the core of all our procurement processes and in particular on major contracts allowing for benefits to the local economy and the communities that reside in the borough. A Social Value Charter, Indicators and Toolkit will ensure that all contractors are assessed through the tendering process on their ability to deliver on these requirements.

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.

6. Financial implications

6.1 The total budget available for the highways maintenance contract for 2016/17 is £9.6 million. This includes some revenue budgets for reactive maintenance, winter service 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 (including full Incentive element)
- 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 budgets.

6.3 As part of the negotiations for the previous contract extension an overall base rate reduction of 1.5% was offered by Tarmac estimated to offer a potential saving of £620,000 over the remainder of the contract.

6.4 As a result of ongoing negotiations and collaborative reviews of processes and practices, Tarmac reduced some of its reactive maintenance rates between 16% and 29% giving a potential overall saving to the Council of c£500,000.

6.5 Given the forecast rise in civil engineering costs it is likely that scheduled rates will increase in any new contract.

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.

7.3 The Council will need to liaise with Tarmac and any new contractor(s) in relation to the TUPE transfer of staff. In particular, if any element of the service provision is to be provided directly by the Council, then there may be some staff who are entitled to have their contract of employment transferred to the Council.

8. Property implications

8.1 At present Tarmac have a lease on the depot at Apex Road which is owned by the Council. It is anticipated that any new partner will continue with these 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 recommendation set out in 2.1 s agreed by Cabinet then there are no direct staffing implications for the Council. TUPE arrangements for staff currently employed by Tarmac will need to be managed.

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

Highways Repairs and Maintenance Services Options Appraisal, Gracia Consult
Highway Maintenance Strategy 2015-18

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