

SURREY COUNTY COUNCIL

CABINET

DATE: 28 SEPTEMBER 2021



REPORT OF CABINET MEMBER: MATT FURNISS, CABINET MEMBER FOR TRANSPORT AND INFRASTRUCTURE

LEAD OFFICER: KATIE STEWART, EXECUTIVE DIRECTOR FOR ENVIRONMENT, TRANSPORT AND INFRASTRUCTURE

SUBJECT: AWARD OF TERM MAINTENANCE CONTRACT FOR HIGHWAY SERVICES

ORGANISATION STRATEGY PRIORITY AREA: GROWING A SUSTAINABLE ECONOMY SO EVERYONE CAN BENEFIT/ TACKLING HEALTH INEQUALITY/ ENABLING A GREENER FUTURE/EMPOWERING COMMUNITIES

Purpose of the Report:

In September 2020, Cabinet approved the Procurement Strategy for Highways Contracts. This report provides an update following a procurement exercise for the Term Maintenance Contract and proposes a recommendation to award the contract to the successful bidder.

The award of the contract will enable the Council to preserve and improve Surrey's infrastructure and support the connectivity that will facilitate **growing a sustainable economy and tackling health inequality**. The procurement process undertaken will also **enable a greener future** through the commitments achieved on environmental sustainability and reductions in highway operational carbon emissions. Additional social value and engagement commitments have also been included in the contract to contribute to empowering communities.

Recommendations:

It is recommended that Cabinet:

1. Approve the award of the Term Maintenance Contract to the successful bidder; and
2. Delegate authority to finalise and enter into contract with the successful bidder to the Executive Director for Environment, Transport and Infrastructure in consultation with the Executive Director for Resources and the Cabinet Member for Transport and Infrastructure.

Reason for Recommendations:

For several years, the Council has worked with private sector partners to deliver highway maintenance and improvement activities across the county on its behalf, and with the current arrangements expiring in April 2022 a new contract arrangement needs to be determined.

Following approval of the Procurement Strategy in September 2020, officers from Highways and Transport supported by officers from across the Council including Procurement, Legal Finance and Strategic Commissioning have conducted a "Competitive Procedure with Negotiation" procurement exercise to identify the next Term Maintenance provider.

Following the recent completion of that procurement process, officers are now able to recommend the contract be awarded to the most “economically advantageous” bidder as explained in the Part 2 report.

Executive Summary:

Procurement Process

1. On the basis of the previously agreed strategy decision, procurement of a contract that delivered highway maintenance and improvement activities, alongside opportunities to innovate and achieve improved outcomes for residents has been undertaken. As set out and agreed in the strategy, procurement of a Term Partnering Contract lasting a minimum of ten years, and maximum of 21 years, has been pursued through the process.
2. Given the complex nature of the Term Maintenance Contract, the Competitive Procedure with Negotiation (CPN) was selected. This is a multi-stage process that enables bidders to submit bids with increasing levels of detail, with an opportunity for the Council to evaluate at each stage; discuss, clarify and test any element, and; provide open and detailed feedback on where the responses could be strengthened. The stages of the CPN process are set out in **Table 1**.

Table 1: Stages of the Competitive Procedure with Negotiation (CPN)

Stage	Purpose	Outcome
Selection Questionnaire	Invite any interested party to submit evidence against pre-set criteria of their suitability and capability to deliver the scope and scale of services in the contract	Top 4 bidders taken forward
Initial Tender	Bidders provide high level responses (up to 50 pages) explaining how they will deliver each element of the services in the contract covered across 13 questions	Top 3 bidders taken forward Feedback on Initial Tenders provided by Council to inform Detailed Tender
Detailed Tender	Bidders develop their Initial Tender responses providing much greater levels of detail (up to 280 pages) explaining how they will deliver each element of the services in the contract covered across the 13 questions set out in the Initial Tender stage. Initial pricing submitted alongside the “quality” submission	3 bidders remain in the process Feedback on Detailed Tenders provided by Council to inform Final Tender Feedback on initial pricing
Final Tender	Bidders refine their Detailed Tender responses using the Council’s feedback where desired to strengthen their submission Final pricing submitted alongside the “quality” submission	Contract awarded to most economically advantageous tender

3. As well as fully scrutinising each bidder’s delivery solution in response to the Council’s specifications, there are areas where the Council’s expectations are less narrowly defined and so greater opportunity for a variety of solutions across the bidders such as supporting the Council’s Greener Futures ambitions; providing Social Value to residents, communities and organisations in Surrey; developing and driving innovation and; ensuring continuing value for money throughout the life of the contract. The CPN

process has enabled officers to work through these less specifically defined areas to test for achievability and financial sustainability.

4. The three bidders selected to succeed to the last two stages were Amey UK PLC, Kier Highways Ltd and Ringway.
5. All parties have fully committed to the process, and that is evidenced by the high standard of responses provided in the quality submission with all three final bidders scoring 55 - 61% out of a possible 70% for quality. Furthermore, having made substantial progress between the Initial Tender and Detailed Tender, all three bidders improved their overall score by around 10% between the Detailed and Final Tenders. This is reassuring as we are aware of scenarios in which other Council's highways procurement processes in which one or more of the bidders have withdrawn mid-way through the process despite their investment. As such, it is an important achievement to have retained all three bidders to the final stage.

Performance Framework and Strategic Themes

6. As well as providing detailed specifications for delivering the core services, an ambitious performance framework has also been developed for the contract. Whilst it remains of the utmost importance to measure and monitor performance on the basis of transactional activities, such as "potholes being repaired on time" and the quality of work completed, which is covered in the Strategic Theme of Operational Excellence (as described in paragraph 9), the new Framework will go beyond this by implementing a 3-tiered Balanced Scorecard approach which is in turn linked to achieving a proportion of profit. The three tiers are structured as follows:

- Strategic Themes
- Tactical Outcomes
- Performance Indicators

7. The Strategic Themes were developed to incorporate a combination of the Council's strategies, Directorate and Service ambitions and the culture and behaviours to enable them to be realised. There are seven Strategic Themes which are expected to remain both relevant and reasonably static throughout the contract term:

- Greener Futures
- Partnering and Collaboration
- Innovation and Improvement
- Customer Needs
- Social Value
- Operational Excellence
- Financial Resilience

8. Within each Strategic Theme, there will be a series of Tactical Outcomes identifying and describing how things are expected to look when successfully achieved. Within each Tactical Outcome, there will then be a series of measures to inform the achievement (or not) of the Tactical Outcome. These will be a mixture of objective and subjective measures.

9. The Operational Excellence Strategic Theme will incorporate many of the more "traditional" KPI measures with which members will be familiar and which will continue to provide reassurance about operational delivery. These will now also be complemented with other measures of success in the new contract.

10. A proportion of the Service Provider's profit will be linked to the Tactical Outcome level. Whilst the overall profit available each year will remain static, the proportion assigned to each Tactical Outcome could change as the partnership's priorities evolve.

Tender Evaluation

11. Alongside delivering on the strategic ambitions in the Community Vision 2030, services and activities relating to Highways are recognisably important to residents/businesses, and the community having confidence in the Service Provider's capability to meet these expectations has been the focus of the procurement.
12. A key component from the planning and engagement phase through to the procurement itself has been to ensure that the new arrangements can support the Council's ambitions beyond "simply" carrying out the day to day maintenance and improvement activity on the road network. By combining the majority of services into a single contract, the Service Provider effectively becomes an extension of the Council, and it is much easier to align strategies and objectives when compared to working with multiple contractors. The combined capacity and capability of the Council and the Service Provider thereby have a greater opportunity to really deliver on some of those stretching ambitions.
13. For example, a substantial proportion of the Council's carbon emissions result from delivering highways maintenance and improvement activities whether through consumption of fossil fuels in vehicles, plant and tools or in materials' production such as bitumen in asphalt or concrete used in construction. Working with the Service Provider, we will be able to combine resources and experience to identify and drive innovation within the sector seeking out funding opportunities from external bodies, reinvesting savings in further innovation where available and creating a culture where colleagues from the Council, Service Provider and Supply Chain feel empowered to come forward with and develop ideas of how the service can improve from day to day small interventions to larger potentially barrier-busting ideas.
14. Another key opportunity in working with the Service Provider as a large employer and presence in the County will be the ability to leverage investment (whether time, effort, energy or money) in delivering Social Value projects within the County, and bidders have been tasked with promoting this as a core part of their offering.
15. Notwithstanding all the wider ambitions, officers have ensured that delivering the core services continue to be at the heart of the future service delivery and a key focus on these important front line and often statutory functions has been presented clearly as an essential requirement throughout the procurement process.
16. A very important aspect of the new arrangements will be to ensure that the Council is able to work in close partnership with the new Service Provider whether in delivering core services or the wider ambitions. This relationship will provide a "backbone" upon which the Council can build greater and more productive relationships including our other Service Providers, District and Borough Councils, utility providers, business and other organisations across Surrey. Bidders have been assessed on their approach to collaboration and partnership and how they will help to develop and maintain a productive relationship with the Council and other partners.

17. In terms of evaluation, a 70/30 split was applied with 70% being awarded against the quality response and 30% awarded against the pricing response. Whilst price will always be a very important consideration, in entering into a relationship that will last a minimum of 10 years and up to 21, it is critical that the services provided are effective, able to evolve and financially sustainable for the Council and its partner – if the Council is paying more than it should or if the Service Provider is not able to recover their costs, the relationship will likely become compromised very quickly.

Outputs/What's Different

18. As described, the CPN process has allowed the Council to evaluate each bidder's suggested approach at Initial Tender and Detailed Tender, providing feedback and helping to identify where proposals can be developed and stretched. Key to this approach however is ensuring ideas are achievable and sustainable whether in practical or financial terms or both.
19. As part of their submission, bidders have been asked to explain how they will help the Council achieve a net zero carbon position by 2030. A key part of this is their fleet proposal with a wide range of vehicles being used across the services and how these can be low or zero emission and where possible from day one of the contract.
20. The prevalence of zero and low emission cars and "light" goods vehicles (those below 3.5 tonnes) is increasing, and it is expected that subject to improved electricity capacity within the depots, most if not all vehicles within this category will be electric or hybrid based on the use of the vehicles.
21. The market for larger vehicles such as lorries and gritters is not quite in the same position; however, manufacturers are investing heavily into research and development, and trials of larger vehicles with alternative fuels such as hydrogen alongside electrically powered vehicles is advancing. It is highly likely these larger vehicles will be converted to a zero or low emission option either during their life as the technologies mature or when they are replaced.
22. In addition, Social Value outputs are expected to be a core benefit arising from these new arrangements with each bidder providing a comprehensive overview of their intended approach and a number of commitments to be delivered over the initial years of the contract which will be developed and built upon over the subsequent years.
23. All bidders have provided suggested methods to improve engagement with residents including how defects are reported and progress communicated back to them as well as how they can engage and communicate effectively with communities and affected road users prior to work being delivered which might cause disruption. By including the majority of services under a single contract, the successful bidder will have much greater control over programming work in the same location to reduce disruption, and they will also be expected to work closely with the Council's other highways contractors and utility providers to combine works where possible further mitigating the potential impact of work on the road network.
24. Throughout the entire process a strong focus has been maintained on the importance of ensuring work meets the quality expected and is completed "Right First Time". This

means ensuring a focus on getting the quality right as well as delivering greater value for money by fewer visits to repair defects at the same location, and any traffic management interventions such as barriers, temporary lights or lane/road closures are in place for less time. By having this as a clear focus, the successful bidder will drive their approach to planning and supervision of work ensuring operatives are equipped to carry out the required repairs and embed a quality and right first-time culture.

25. In order to ensure the Council is able to robustly monitor performance against our strategic themes, new governance will be put in place and will include relevant Cabinet Members at a Strategic Board level in providing oversight to the performance of the contractor. The governance mechanism is centred around a tiered structure of regular contract meetings at all levels between officers and the contractor's team and where appropriate the supply chain. As well as measuring, overseeing and assuring performance, these groups or "Communities" will be tasked with working together to identify and drive improvements, new ways of working and innovations in the sector.
26. The Service has also created a new Strategic Contract Group to oversee, coordinate and manage performance and contract management activities supported by the operational engineers and a technical highways laboratory to carry out materials and quality testing.
27. The new contract has been designed to provide a robust set of mechanisms to enable the Council to ensure the new arrangements are delivered effectively whilst also maintaining a degree of flexibility and adaptability. This will allow us to make changes and improvements where new ideas, construction materials or ways of working emerge without the need for complicated, costly or protracted contractual changes.

Consultation:

28. Consultation on the Procurement Strategy was carried out in advance of the September 2020 Cabinet paper.
29. Throughout the procurement process, officer-led scrutiny and assurance has continued to ensure the programme has remained on track, incorporating a wider range of views than the Service itself and allowing the team to adapt to a wider range of Council priorities.
30. As well as a Programme Board within the Environment, Transport and Infrastructure Directorate and reporting via the Council's transformation programme, an assurance board comprised of senior Officers in Procurement, Finance, Customer Service, Finance, HR&OD among others has met every 4 to 6 weeks for the duration of the procurement process to receive updates and challenge the programme team on progress.
31. As described above, the evaluation panel included officers from a wide range of roles within the Service as well as within specific disciplines elsewhere in the Council including Finance, Greener Futures, Social Value, and Equalities, Diversity and Inclusion.
32. Officers presented a report on the Procurement at the recent Communities, Environment and Highways Select Committee.

Risk Management and Implications:

33. Following award, a significant risk will be in successfully mobilising the contract. Based on previous experience, a 6 month mobilisation period has been allowed to provide sufficient time to carry out much of the planning activity required prior to the end of the year with many of the “actions” taking place from January 2022. The Council’s team will work closely with the Service Provider to carry out the various activities required under the mobilisation to ensure the transition to the new Contract and ways of working is as smooth as possible. This will be supported by a joint governance structure to oversee the mobilisation work streams reporting into a Mobilisation Board attended by senior officers from both SCC and the successful bidder.
34. A key focus during the procurement process has been to fully understand the risks from the bidders’ perspectives and particularly those that are likely to result in additional premiums in their pricing to mitigate risk. These include elements such as areas of liability and price increase mechanisms where if not addressed, would lead to the bidders making assumptions on what might be the worst case outcome and pricing on that basis which could easily lead to the Council paying more than needed.
35. When evaluating these risks, it is important to consider where the management and mitigation of the risk is best placed – in some cases this will be the Service Provider, some cases the Council, and in others there may be a shared responsibility and accountability. Supported by its advisors and in house teams, the Council has developed a fair but risk balanced contract which will govern the relationship.

Financial and Value for Money Implications:

36. A key part of the evaluation criteria covered the price of services with 30% of the overall score allocated to price. This was further subdivided across operational activities and central office overheads and profit.
37. Contracts of this nature normally include the provision of a mechanism to increase prices each year linked to inflation. For many years Retail Price Index (RPIx) has been the standard used; however, as this is derived from a very wide range of commodities and services, it is often not reflective of the price fluctuations for costs in the sector. This leads to Service Providers and their supply chains either adding additional risk premiums to the prices which an authority has to bear regardless of the actual prices, or scenarios where the prices an authority is being required to pay are insufficient to meet the costs, thus making the contract unsustainable. The most notable impact of such risk pricing is in work areas where bitumen is a predominant component as the price of this commodity fluctuates to a much greater extent than most products.
38. Over recent years there has been a movement in the industry towards a set of indices created by the Building Cost Information Service (BCIS). When considered over longer periods (of say more than 5 years), the change in price is much lower using the BCIS indices when compared with RPIx so presents an improved financial forecasting position for the Council. However, year to year differences are likely to be greater (positive and negative) and so the Council will need to incorporate this into its year to year and medium term financial budget planning or by greater use of a contingency budget. Further, there is much less need for the Service Providers to build additional, unnecessary risk into their prices at the outset.

Section 151 Officer Commentary:

39. Although significant progress has been made over the last twelve months to improve the Council's financial position, the medium-term financial outlook beyond 2021/22 remains uncertain. The public health crisis has resulted in increased costs which may not be fully funded. With uncertainty about the ongoing impact of this and no clarity on the extent to which both central and local funding sources might be affected in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.
40. The three contract bids have been analysed in terms of revenue and capital and compared to existing budgets. Further information is contained within the Part 2 report.
41. The S151 Officer supports the recommendations of this report and is satisfied the recommended tender is offering the best overall combination of price and quality.

Legal Implications – Monitoring Officer:

42. This Report seeks approval to award a contract for Highway Services for a minimum period of 10 years. The value of the contract is in excess of £5million and, under the Procurement and Contract Standing Orders, Cabinet has authority to award the contract.
43. Approval is sought for finer detail and award of the contracts to be delegated to the Executive Director for Environment, Transport and Infrastructure in consultation with the Executive Director for Resources and the Cabinet Member for Transport and Infrastructure.
44. Under Article 6 of Part 2 of the Constitution the Cabinet has power to delegate to members and officers.
45. The Public Contracts Regulations 2015 apply to this contract and the Competition with Negotiation process is a permitted process to procure the services. Details of the process are referred to in the report.
46. The Form of Contract encourages a close partnering relationship with the successful contractor. External lawyers, Bird and Bird, were instructed to liaise with officers, draft the contract, carry out the procurement and finalise the contract. Internal Legal has been available to assist, where necessary.

Equalities and Diversity:

47. The need for an Equality Impact Assessment (EIA) was considered, however, a conclusion was reached that as there were no implications for any public sector equalities duties due to the nature of the services being procured, an EIA was not required. Despite this, the preferred supplier will be required to comply with the Equalities Act 2010 and any relevant codes issued by the Equality and Human Rights Commission.

ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

- 48. An Environmental Sustainability Assessment (ESA) has been completed as the primary subject matter is related to maintenance of infrastructure.
- 49. In carrying out highway maintenance and improvements there are a number of areas where environmental sustainability needs to be considered. For example:
 - a. heavy goods vehicles which currently have few if any low or ultra-low emission options are used extensively in this kind of work. It is highly likely that over the term of the contract significant developments will be made in this area
 - b. The use of bitumen and concrete in this sector is extensive. The Council has and will continue to work with its suppliers to develop and incorporate lower emission materials and/or incorporating recycled materials wherever possible. The Council’s materials laboratory will be a key asset in developing this area.
 - c. As with the use of new materials, there is an inevitable and unavoidable production of waste in carrying out highways maintenance and improvements. The council will work closely with the successful bidder to identify opportunities to reduce waste production in delivering services and where this cannot be avoided, seek opportunities to reuse waste in the process and ultimately seek to avoid waste being sent to landfill wherever possible.
- 50. As part of the documentation provided to bidders, the Council will be clear on its ambitions and anticipated outcomes such as our net zero carbon target. A “shopping list” of ideas has not been issued for bidders to respond to; instead they have been challenged to push the boundaries of this area and build commitments into the new contract and through a balance of that contract and a strong governance mechanism to ensure they are realised.

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Other Implications:

- 51. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	No direct implications identified.
Safeguarding responsibilities for vulnerable children and adults	No direct implications identified
Public Health	No direct implications identified
Environmental sustainability	As described above
Compliance against net-zero emissions target and future climate compatibility/resilience	Covered in the Part 2 report

What Happens Next:

- 52. Following Cabinet award, the Council will work with the successful bidder’s Mobilisation and Senior Management Teams to implement their mobilisation plan.

53. A communication plan will be developed and implemented to advise stakeholders on the award to the successful bidder.

Report Author:

Paul Wheadon, Strategic Contracts Group Manager, paul.wheadon@surreycc.gov.uk

Consulted:

Future Highways Contracts Procurement Board (Senior Officers from Services across the Council)

Major Projects Board

Communities Environment and Highways Select Committee

Cabinet Members for Transport and Infrastructure and; Resources

Annexes:

Part 2 report

Sources/background papers:

Cabinet Paper September 2020 (item 134/20)