

Committee: Cabinet

Date: 19 September 2016

Agenda Item:

Wards: All

Subject: Options Analysis Report for the re-procurement of the Highway Works and Services Term Contract

Lead Officer: Chris Lee – Director of Environment and Regeneration

Lead Member: Councillor Martin Whelton – Cabinet Member for Regeneration, Environment and Housing

Contact Officer: Steve Shew – Interim future Merton Infrastructure Manager

Recommendations:

1. That Cabinet note the content of this report.
2. That Cabinet agree a two-year extension to the current Highway Works and Services Term Contract with F M Conway, as the most economically advantageous option to continue to deliver planned and reactive highway works from 1 September 2017 to 31 August 2019.

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To inform Members of the potential options available to the Council to continue to deliver planned and reactive highway works from 1 September 2017.
- 1.2. This report recommends that Cabinet agree to award a two-year extension to the current term contractor – F M Conway – from 1 September 2017 as allowed under the Terms and Conditions of the Contract.
- 1.3. The existing contract continues to provide value for money and delaying the re-procurement in favour of a contract extension maintains continuity as the council delivers on-going public realm regeneration work in Mitcham through to 2018.

2 DETAILS

- 2.1. The Council's current Highway Works and Services Term Contract was awarded to F M Conway Ltd for a five-year term from 1 September 2012 to 31 August 2017. The terms and conditions of this contract allow for the contract to be extended for up to a further two years until 31 August 2019.

3 ALTERNATIVE OPTIONS

- 3.1. Three options are available to the council to consider:
- Extend the current contract for a period of up to two years to 31 August 2019;
 - Fully re-procure the Highway Works and Services Term Contract, which would need to commence immediately, with the award of a new contract on 1 September 2017; or
 - Form a call-off contract to deliver planned and reactive highway works through LoHAC (London Highways Alliance Contract), led by TfL.
- 3.2. The preferred option is to extend the existing contract and initiate a full procurement exercise between 1 May 2018 and 31 May 2019, which will allow a three-month mobilisation period for any new contractor.
- 3.3. This option allows greater time for a full review of the Term Contract, scrutiny and market testing and creates capacity within the future Merton team for the procurement exercise. F M Conway is also delivering the Rediscover Mitcham Regeneration Scheme where consistency and continuity of the Council and contractor relationship will help ensure that the project is completed by January 2018.

Extension to the current Term Contract

- 3.4. Extending the existing Term Contract for up to two years, as allowed under the current Terms and Conditions of the Contract, is the most expedient and economically advantageous approach to continue to deliver planned and reactive highway works from 1 September 2017 to 31 August 2019.
- 3.5. There are currently a number of major projects being delivered through the Term Contract, which will extend beyond September 2017. Therefore, a two-year extension will provide continuity and a seamless approach in delivering these projects to completion.
- 3.6. F M Conway has been the Council's highway term contractor since 1979 and over this period has developed a very successful, strong and fairly unique working relationship with Merton. This is complemented by providing a dedicated Contracts Manager who is co-located with Merton's Client team. F M Conway considers Merton as their flagship borough.
- 3.7. From price comparisons we know that the contract is very competitively priced and F M Conway have successfully delivered cost saving initiatives totalling some £160,000 during the current life of the Term Contract – September 2012 to August 2016.
- 3.8. F M Conway's overall performance against the existing contract has been strong and all monthly targets have been met or exceeded as outlined in

Section 4 below. They demonstrate a positive approach to health and safety and have good systems in place to deal with any specific issues. They are also very proactive in meeting Client changes and responding in a timely manner.

- 3.9. They are very keen to continue working with Merton and have stated that they will work closely with us to identify suitable opportunities that support and aid Merton's ambition to be London's Best Council by 2020.
- 3.10. Please refer to the attached Appendix – Merton Efficiencies 2017 Extension Proposal – which has been produced by F M Conway in support of the proposed extension.
- 3.11. F M Conway have recently been successful in winning the Street Lighting Maintenance and Improvement Works Term Contract from 1 October 2016 to 31 March 2022, which will bring additional benefits and synergies should the contract be extended.
- 3.12. Officers have agreed a cost reduction of 7% on reactive works (revenue) savings with F M Conway should the two-year extension period be agreed. This would equate to an annual cost reduction of £47,600 (£95,200 for the two-year extension period) based on the current forecast spend of £680,000 (G00127 – EH56).
- 3.13. Should the extension to the existing term contract be approved, officers will instigate a full review of the current term contract to define what changes and updates are required to consider our approach and timescales for re-procurement. This review will include a medium to long-term strategy to maximise the opportunity for savings and improvements for the future delivery of reactive and planned highway works, including shared services and LoHAC (London Highways Alliance Contract) as outlined below.

Re-procure a new Term Contract

- 3.14. The timescale for re-procuring a new Highway Works and Services Term Contract under the OJEU (Official Journal of the European Union) Restricted Tendering procedure is very tight and there is currently insufficient resource, experience and capacity to undertake a full review of the contract in-house.
- 3.15. As outlined in 3.5 above, there are currently a number of major projects being delivered through the Term Contract, principally Mitcham Town Centre, which will extend beyond September 2017. Therefore, a two-year extension will provide continuity and a seamless approach in delivering these projects to completion.
- 3.16. It is estimated that the re-procurement of a new Term Contract would cost in excess of £80,000 and will require the appointment of an external 'highway specialist' Consultant to augment the in-house procurement resource. Since there are no major projects currently in the pipeline for 2019, it would be prudent to wait until then to re-procure this major Term Contract.

- 3.17. As part of the re-procurement options, officers have looked at options to share procurement with neighbouring Boroughs but there are no opportunities to collaborate due to the following reasons:
- Sutton and Kingston are now operating a shared Highways and Transport service and have contracts in place to deliver services;
 - Croydon has recently extended their Term Contract with Kier for three years until October 2018 and are currently looking at options for renewal;
 - Lambeth's Term Contractor is F M Conway and this contract is due to expire in April 2017. However, they are looking to extend this for a further year until April 2018 to consider options to re-tender, including a possible DLO (Direct Labour Organisation) bid;
 - Wandsworth have delivered their reactive highway services in-house for many years through a DLO although F M Conway are contracted to undertake their planned resurfacing work. The current Contract is due to expire in summer 2018 but this could be extended for a further year to consider options for a joint procurement with Richmond now they have merged services. F M Conway is currently the Term Contractor for Richmond.
- 3.18. In the event of contract extensions, officers will consider further opportunities to work with other local authorities wherever practical.

LoHAC (London Highways Alliance Contract)

- 3.19. There is an option to form a call-off contract to deliver planned and reactive highway works through LoHAC, led by TfL. However, this is not recommended as there are concerns over the capacity of the contractor to supply sufficient resource to deliver services at the tendered rates; this is an on-going concern for R B Kingston who use LoHAC to deliver their planned and reactive highway works. Merton and TfL have also had unsatisfactory performance issues from LoHAC on the Colliers Wood public realm project.
- 3.20. As this is a pan-London contract, it requires a more generic way of working and therefore the specification within the contract is somewhat different to many boroughs' standard specifications. Should Merton decide to call-off works through LoHAC we would have to engage with TfL and Kier on variations to the standard specification before the contract could commence. This is likely to be a lengthy and complex process.
- 3.21. It is too early in the life of LoHAC to fully determine the outputs, value and quality of this option. If the F M Conway contract extension is agreed, officers will continue to monitor and consider LoHAC as an appropriate method in the contract re-procurement for 2019.

- 3.22. A large, centrally managed, TfL-led contract may not be responsive to the needs of Merton. This is a vitally important issue, as the Council seeks to set high standards of customer care and, increasingly, to focus on responding quickly and efficiently to its residents' needs.
- 3.23. Independent soft market testing has identified that better value and quality can be obtained by extending existing contracts and re-procuring new contracts than using LoHAC. The reasons for this are given below and include:
- Avoidance of an extra tier of bureaucracy and cost that the 'managing company' structure of LoHAC brings;
 - LoHAC has been strategically priced and therefore looks relatively cheap but the complex schedule of rates allows for manipulation of final accounts;
 - Boroughs are second priority to TfL in LoHAC. Outside LoHAC, boroughs get better service with respect to emotive elements such as winter service and emergency call-outs; and
 - Evidence of individual project tenders being 12-14% cheaper than LoHAC when compared like for like.

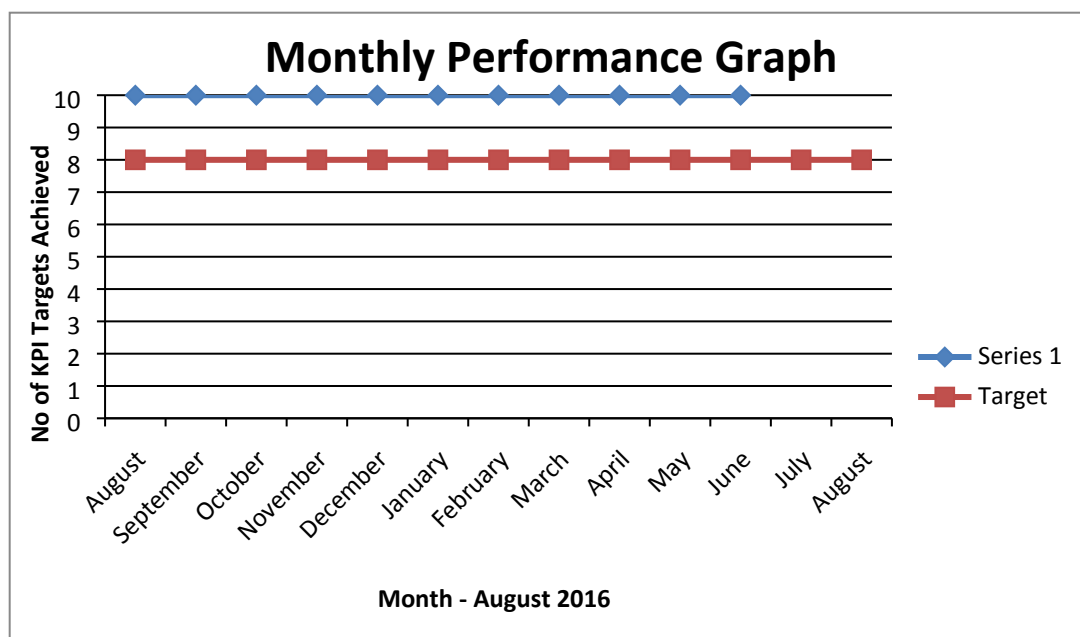
4 CONTRACT PERFORMANCE

- 4.1. There are ten core KPIs (Key Performance Indicators) within the contract and these are monitored at the Monthly Contract Meetings. The rolling 12-month average performance figures are given in the table below:

KPI	Description	Target (%)	Actual (%)
1	The timely submission of a clear, concise and accurate report for KPIs each month, including supporting data in an agreed format.	100	100
2	The tonnage of material excavated that is diverted from landfill, divided by the total tonnage that is excavated.	100	100
3	Number of invoices submitted that are factually correct and submitted within two weeks of completion of work.	95	96
4	Number of jobs where no damage occurred to statutory undertakers' apparatus.	97	100
5	Number of jobs completed where no complaints or third party claims against the contractor are received.	97	100
6	Number of jobs completed where no NRSWA/Permit Fixed Penalty Notices were issued against the Contractor.	95	98
7	Number of Emergency Call Outs attended to within stipulated time.	100	100
8	Number of reactive repairs completed within stipulated time.	90	91
9	Number of planned projects completed within stipulated time.	95	99

10	Number of estimates prepared by the Contractor, found to be within 10% of the final cost of the work.	90	99
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4.2. The Monthly Performance Graph for the number of KPIs met or exceeded from August 2015 to June 2016 is given below:



5 RECOMMENDATION

5.1. That Cabinet consider the information provided in Sections 3 and 4 of this report and agree a two-year extension to the current Highway Works and Services Term Contract with F M Conway, as the most economically advantageous option to continue to deliver planned and reactive highway works from 1 September 2017 to 31 August 2019.

6 CONSULTATION UNDERTAKEN OR PROPOSED

6.1. A report was presented to the Sustainable Communities Overview and Scrutiny Panel on 7 September who agreed that a two-year extension is the most economically advantageous option to continue to deliver planned and reactive highway works from 1 September 2017.

6.2. They have requested that a further report is submitted to Scrutiny outlining the contract specification and strategy to be adopted to explore opportunities for further efficiencies when the re-procurement commences.

7 TIMETABLE

7.1. If Cabinet agreed to a two-year extension we would need to inform F M Conway of this decision no later than six months prior to the expiry of the original contract. This would need to be done by 1 March 2017.

7.2. If Cabinet decide not to extend the existing contract, depending upon its recommended course of action, the Council will need to mobilise and

commence an OJEU procurement exercise imminently as the alternative options available involve a high element of cost and procurement with input from the Capital Project and Procurement Boards.

8 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 8.1. The cost of procuring a new Highway Works and Services Term Contract will require the appointment of an external 'highway specialist' Consultant and is estimated to cost £80,000. This would need to be met from specific growth provision from revenue and capital budgets.

Capital

- 8.2. The approved capital programme 2016-2020 contains the following budgetary provision for expenditure in relation to this contract:

Department	2016-17	2017-18	2018-19	2019-20
	£000's	£000's	£000's	£000's
Borough Roads Maintenance	1,500	1,500	1,500	1,250
Repairs to Footways	1,000	1,000	1,000	1,000
Total	2,500	2,500	2,500	2,250

- 8.3. In addition, Transport for London (TfL) Capital Funding in respect of Principal Roads also utilises this contractual arrangement. Funding for individual schemes is agreed annually with TfL, for 2016/17 £541,900 is approved for expenditure on Principal Roads. It is currently envisaged that similar capital sums will be earmarked annually over the proposed contract period.
- 8.4. The proposals contained in this report will be contained within the above capital budgetary provision.

Revenue

- 8.5. The section has an associated agreed saving (ENV16) of £65k in 2017/18 and a further £65k in 2018/19. Although the 7% cost reduction is welcomed and will contribute towards reducing costs, if the current level of expenditure continues into 2017/18 and 2018/19 it would not be sufficient to contribute towards meeting these savings.

9 LEGAL AND STATUTORY IMPLICATIONS

- 9.1. As the responsible highway authority, Merton has a duty to maintain highways maintainable at the public expense under Section 41 of the Highways Act 1980.
- 9.2. Under the Terms and Conditions of the current Term Contract, the Council has the discretion to extend the Contract for an additional two years.

10 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 10.1. The effective maintenance and improvement of the adopted highway network in the borough is essential to meet our statutory duty to maintain a safe environment for residents, businesses and users of the network. This is especially important for disadvantaged groups such as those with mobility difficulties and the elderly.

11 CRIME AND DISORDER IMPLICATIONS

- 11.1. Section 17 of the Crime and Disorder Act 1998 requires all Local Authorities to consider crime and disorder while exercising their duties. The design of highway improvements and maintenance on existing roads complies with nationally agreed Codes of Practice and Design Guides and assists with delivering the Council's ambitions of "A Safe and Secure place to Live" and contributes to the objectives of the Thematic Partnerships contained in the Community Plan 2009-19 namely the Sustainable Communities and the Stronger Communities strategic themes.

12 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 12.1. Effective maintenance and improvement of the Highway Network will minimise insurance or injury risks to the Council by ensuring that the public highway is safe and serviceable.
- 12.1. Insurance levels set out in the contract requirements have been assessed by the Council's Risk and Insurance team and have been deemed to be of an acceptable level.

13 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Merton Efficiencies – 2017 Extension Proposal

14 BACKGROUND PAPERS

- 14.1. None.