

Mr Roger Elkins, Cabinet Member for Highways and Infrastructure	Ref No: HI21 18.19
December 2018	Key Decision: Yes
Interim Highway Maintenance Term Contract	Part I or Part II: Part I
Report by Executive Director Economy, Infrastructure and Environment and Director of Highways and Transport	Electoral Division(s): All

Summary

The Highways Term Maintenance Contract is used to deliver a range of statutory highways maintenance services. The current interim contract, with Balfour Beatty Living Places ("BBLP"), commenced on 1st July 2018 with an initial term of three months and an option to extend, subject to governance controls, to a maximum period of twelve months (therefore terminating on 30th June 2019).

A new long-term contractual arrangement is required to commence on expiry of the current interim contract. These new arrangements which are the subject of a forthcoming procurement cannot be completed by 1st July 2019, when the current contract expires, and so provision needs to be made to ensure the continuation of essential services and it is proposed that that is most efficiently achieved by further extending the existing interim contract with BBLP beyond its present term. This is to ensure the statutory services are provided whilst giving sufficient time for a new contract to be effectively processed and completed.

It is therefore proposed to extend the interim contract to 31st March 2020 on terms broadly similar to those already in place.

West Sussex Plan: Policy Impact and Context

The proposal supports the prosperous place priority in the West Sussex Plan. The interim contract will facilitate maintenance of the highway network. A well maintained highway helps to support local businesses and communities by ensuring safe, reliable, and consistent journey times.

Financial Impact

The extension to the interim contract will be designed with sufficient flexibility to contain expenditure within projected budgets.

Recommendations

That the Cabinet Member for Highways and Infrastructure approves;

- 1) the extension of the current interim highway maintenance term contract with Balfour Beatty Living Places to 31st March 2020; and
- 2) the delegation of authority to the Director of Highways and Transport to finalise the terms of the contract extension, and to extend the contract further if necessary, in accordance with the Council's Standing Orders on Procurement and Contracts.

PROPOSAL

1. Background and Context

- 1.1. The current Highway Maintenance Term Contract (HMTTC) is an interim contract delivered by BBLP. The interim contract commenced 1st July 2018 for an initial period of 3 months. An extension has been agreed and the contract is now due to expire 31st March 2019. A further extension is available to the 30th June 2019. These arrangements were made due to technical and legal problems associated with a full service procurement exercise, when the resolution of those issues was uncertain and timings unpredictable.
- 1.2. Due to the need to reconfigure the requirements of the service, to consider and pursue options for service delivery and to examine the position of the market to meet the preferred approach to service delivery and also to design a sound procurement plan it is not possible to be confident that the longer term service can be successfully procured by 1st July 2019. That review of service and procurement planning requirements has also led to the conclusion that it is likely to take several months longer than anticipated and that it would not be responsible to alter the service during a winter service period. A plan to secure a long term arrangement will need to be in place by 1st April 2020, and so arrangements need to be made to extend the present interim contract with BBLP beyond its current term.
- 1.3. The Highways Maintenance service needs to be procured, and an interim solution needs to be devised, which ensures the consistent quality, accessibility, affordability, availability and comprehensiveness of these statutory services.
- 1.4. The most cost effective means of achieving this for the County Council is to extend the interim contract arrangement with BBLP until 31st March 2020. This will give sufficient time for a new contract to be effectively procured and completed, the continuity of statutory service provision, and will safeguard the provision of the statutory winter service 2019/20.

2. Proposal Details

- 2.1. It is proposed to extend the current interim contract arrangement with BBLP to 31st March 2020 on terms broadly similar to those already in place. Detailed contractual arrangements have yet to be concluded but, in essence, the two proposals for extending the current interim contract arrangement are to:
 - i. Vary the existing interim contract with BBLP;
 - ii. Enter into a new contract, substantially on the same terms as the current interim contract, with BBLP.
- 2.2. Both options are being further explored but the first option, to vary the existing interim contract, would seem to be a more cost-effective and straightforward solution for the County Council.

FACTORS TAKEN INTO ACCOUNT

3. Consultation

- 3.1. The Executive Director of Economy, Infrastructure and Environment, the Director of Finance, Performance and Procurement and the Director of Law and Assurance have been consulted.

4. Financial and Resource Implications

- 4.1. The current contract includes spending in both the revenue budget and capital programme. Estimated annual spend in 2018/19 is summarised below:

	2018/19 £m
Total Capital Contract spend estimate	22.3
Total Revenue Works Contract spend estimate	8.3
Estimated annual spending through Contract	30.6

- 4.2. The extension to the interim contract will not cover a full financial year and so, based on previous years expenditure, it is anticipated that expenditure through the extension to the interim contract will be in the region of £16 million.
- 4.3. The cost of the current arrangements has been shown in the Total Performance Monitor as a pressure of £1.5m in the current financial year. The extension of the contract will allow a reduction in the management overhead charged by the contractor, with an expectation that this budget will be balanced by the year end.

5. Legal Implications

- 5.1. Approval through a separate key decision is being sought from the Cabinet Member for Highways and Infrastructure, for the County Council to procure and enter into a new HMTc, or set of contracts, to commence on expiry of the interim contract.

6. Risk Assessment Implications and Mitigations

- 6.1. The risk of not authorising the extension of the interim contract is that the County Council's statutory duty to maintain the public highway will not be met.
- 6.2. The procurement of a new HMTc will apply techniques and strategies to manage and mitigate risk. The status of current identified risks will be summarised in a risk register, where they remain until the risk has either been removed entirely, or moderated to an acceptable level through mitigating action.
- 6.3. There is a procurement risk for the County Council in continuing with the interim contract with BBLP as this proposal lengthens the time the Council is contracting on a non-competitively procured, single tender basis.

- 6.4. Consequently, other potential providers may seek to challenge the County Council's decision to award to BBLP on the ground that they have been denied the opportunity to tender for the work. This risk has been considered as part of the consideration of alternative options. The conclusion is that the Council has no viable and cost effective alternative to the proposed extension and that the solution envisaged by such a challenge could not be considered reasonable in terms of value for money or service viability.
- 6.5. The risk register will be a live document which will be regularly updated and reviewed in line with industry best practice and the Council's risk management processes and governance provisions. There are currently a number of 'red risks' on this project and the extension of the interim contract arrangements will help to mitigate those immediate risks.

7. Other Options Considered

- 7.1. The current interim contract with BBLP is due to expire on 30th June 2019 and there is a requirement to enter into a new arrangement for delivery of this statutory function until a new contract landscape is in place. A number of procurement models and other options are available, albeit most have been discounted as a result of time constraints, and these have been fully explored during the development of this proposed solution.
- 7.2. The alternatives to the proposal are:
 - a) To undertake a brief competitive tender exercise for a short term contract for around 12 months of service
 - b) To identify an alternative provider through a market testing exercise
 - c) To secure the service through the contractual arrangements of another local highway authority
- 7.3. Each of these alternatives has been assessed for practicality and value for money. In each case a significant period of time and resource would need to be deployed (both by the Council and any potential service provider) to draw up the terms of engagement and service provision, to negotiate terms and to enable the mobilisation of resources and workforce, including any TUPE transfer of staff from the current provider of the interim contract. This would require similar time and effort as that for the main contract and is not likely to secure greater value for money. The market is not likely to include service providers able to expend the time and effort required to secure such a short term contract.
- 7.4. The other alternative would be to secure a shorter extension which was simply sufficient to provide the time to complete a successful procurement of the longer term contract. That would be likely to take the extension to the middle of the winter of 2019/20, when services are most critical and resources most under pressure and when the transfer and mobilisation of staff and resources would be most difficult.

8. Equality and Human Rights Assessment

- 8.1. The public sector equality duty will apply to the delivery of the services which fall within the contract, and the terms of the contract will ensure that they enable the County Council to fulfil its obligations through the delivery of the contract, and provide sufficient assurance that the duty will be complied with. The proposal has no implications under the Human Rights Act 1998.

9. Social Value and Sustainability Assessment

- 9.1. The new HMTC will be designed to provide added social value. The contract design will take into account the wider social, environmental and economic benefits, which are set out in the Council's 2015 Sustainability Strategy. Whilst most of these benefits may not be delivered through the interim contract they will be built into the plans for the service beyond the proposed interim arrangement.

10. Crime and Disorder Reduction Assessment

- 10.1. There are no foreseeable crime and disorder implications to this proposal.

Lee Harris
Executive Director
Economy, Infrastructure
and Environment

Matt Davey
Director
Highways and Transport

Contact Officer:

Chris Barrett, Contract Lead Professional, 03302226707

Appendices

None

Background papers

None