

Item No. 19.	Classification: Open	Date: 7 February 2012	Meeting Name: Cabinet
Report title:		Combined Gateway 1 Procurement Strategy Approval and Gateway 2: Contract award for Integrated Highways Term Contract	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Barrie Hargrove, Cabinet Member for Transport, Environment & Recycling	

FOREWORD – COUNCILLOR BARRIE HARGROVE, CABINET MEMBER FOR TRANSPORT, ENVIRONMENT AND RECYCLING

This report asks the Cabinet to approve the procurement strategy and appointment, via a single supplier award of the incumbent term contractor for the highway maintenance contract to continue providing services from 1 July 2012 until 31 March 2013. In effect it secures the continuity of services whilst allowing the Council sufficient time to procure a longer term contract dealt with earlier at this meeting. I am satisfied that in agreeing this report cabinet will be making provision for the Council to secure a contract which will both reduce costs and improve its current services in the long term.

RECOMMENDATIONS

1. That the Cabinet approves the procurement strategy outlined in this report for the Integrated Highways Term Maintenance Contract of entering into a single supplier negotiation with the current contractor in line with Contract Standing Orders (CSO 4.4.3).
2. That the Cabinet approves the award of a contract to FM Conway Ltd (“FM Conway”) for a period of nine months at an estimated cost as reported in the separate closed version of this gateway report. The award will be effected by way of a variation to the existing contract. The new contract period will therefore run from 1 July 2012 to 31 March 2013.

BACKGROUND INFORMATION

3. Currently the Council procures repairs and alterations to the Borough road network through its highways maintenance contract with FM Conway as the contractor. The contract provides the following services:
 - a) Integrated Highways maintenance:
 - Programmed highway inspections and fault reporting
 - Reactive and planned maintenance
 - Highway capital schemes (projects)
 - Programmed gulley inspections, fault reporting and gulley cleansing
 - Reactive and planned drainage works
 - Programmed inspections of structures and fault reporting
 - Reactive and planned maintenance of structures
 - Winter service

4. In May 2005 the Executive approved the award of the Integrated Highway Maintenance Term Contract to FM Conway, for a period of five years from 1 July 2005 with an option to extend the contract term for up to two further years subject to reaching performance criteria.
5. In June 2010 the Finance Director approved the contract extension of the Integrated Highways Maintenance Term Contract for a period of two years from 1 July 2010 to 30 June 2012.

Summary of business case/ justifications for the procurement

6. Southwark's current contractual arrangements for Highways Maintenance will expire in June 2012. Elsewhere on this meeting's agenda cabinet are being asked to approve the procurement strategy for both its highway's term maintenance and highway design and professional services and project construction and delivery which provides for a potential consolidation of the current contract areas. In order to achieve this it is necessary to realign the end dates of the existing contacts to 31 March 2013
7. The value of the single supplier negotiation and extension which is reported in the separate closed version of this gateway report is based on the current contract pricing, the current contract price variation mechanism and the expected volume of work based on the average of the last 5 years including in the case of highways maintenance a previously agreed budget reduction.
8. The proposed interim arrangement (9 month award) will allow officers to undertake a full procurement process for a new contract commencing April 2013 which has been detailed elsewhere on this agenda and is the subject of a separate Gateway 1 report elsewhere on this meeting's agenda.
9. In the current contract FM Conway have an existing interface with the Council's Confirm Asset Management Data base systems including networks and hardware supplied by the Council at no cost as a contract obligation. This arrangement would continue in the proposed extension.
10. Due to the specialist nature of the services which are contained within the current integrated highways contract it is not possible for another service provider to provide these services at a lower price for such a short contract period whilst maintaining service standards.

Options for procurement including procurement approach

11. In deciding how best to achieve effective service delivery and to satisfy the Council's obligations under the Highways Act during for the required 9 month extension period, the following options were considered:
 - Tender short term contract. Discounted since this would still be subject to OJEU process for the works component; significant officer costs; unlikely to interest a 'proven ' contractor due to the short period; high unit rates since contractor will attempt to recover costs within (9 month) construction period.
 - Use an existing framework arrangement. Discounted since from market research there are no viable frameworks operated by local authorities.

- Undertake the service in-house. Discounted since to undertake the work would require short term plant hire, skilled labour and professionals.
12. The option to begin a new procurement during 2011 was considered but it was necessary and appropriate to consider alternative ways of providing this service. The Council will use its appropriate powers under Contract Standing Orders (CSO 4.4.3) to extend the current contracts to 31 March 2013.
 13. The longer term contract procurement process will take place and be completed before the end of the requested 9 month extension. Extending our existing contracts for that period would therefore be most economically advantageous.

Timetable of procurement process

Activity	Complete by:
DCRB/CCRB Review Gateway1: Procurement Strategy report	01/12/2011
Completion of tender documentation	N/A (Single Provider)
Completion of evaluation of FM Conway's proposals	Dec 2011
DCRB/CCRB Review Gateway 2: Contract award report	01/12/2011
Approval of Gateway 1 and 2: Contract Award Report	24/01/2012
Contract award	Feb 2012
Add to Contract Register	Feb 2012
Contract start	01/07/2012
Contract completion date	31/03/2013

Description of procurement outcomes

14. FM Conway have been the Council's service provider since May 2005. Discussions have highlighted their willingness to continue to provide services through an extension period and officers have concluded discussions regarding cost savings following the conclusion of the current contract which expires on 30 June 2012.

KEY ISSUES FOR CONSIDERATION

15. The contract delivery is split over two work divisions, project delivery and minor repairs & maintenance. Project delivery is funded through Council capital receipts, TfL Local implementation plan allocations and S106 agreements. Minor repairs and maintenance are funded through revenue accounts.
16. The current contract uses pre-determined performance indicators which replaced the previous rectification default system. This has ensured a higher scrutiny of the contractor's standard and quality of performance.
17. The contractor has to provide accurate records of its operations on a monthly basis and submits these to the Council for quality checks against pre-defined criteria and calculation of performance indicators.

Partnership

18. Both the contractor and the client work closely together to provide a shared vision, mutual trust, commitment, effective communications and flexibility.
19. In addition FM Conway has provided a free full time resource of a Service Development Manager to enable day to day working and relationships. This includes providing works programmes in conjunction with engineers, carrying consultation with Members of the public, dealing with enquiries, measuring performance and satisfying Construction Design and Management regulations.

Tender process

20. Prior to negotiations with the incumbent contractor a range of alternative procurement options were examined aimed at delivering services, as set out in paragraph 14, to satisfy highway authority obligations under the Highways Act. These alternative options were found to be impractical leaving the continuation of services by the incumbent contractor as the most suitable option.
21. Single supplier negotiations have been entered into with the incumbent provider and as reported in the separate closed version of this gateway report has resulted in a proposed reduction for all schedules of rates items for the remainder of the contract. The resulting savings will be employed to undertake increased work under the contract.
22. It is therefore recommended that the incumbent contractor be appointed to undertake the 9 month contract period using the discounted rates.

Tender evaluation

23. Not applicable.

TUPE implications

24. Not applicable as extension of the current service provider

Plans for transition from the old to the new contract

25. Not applicable as the current service operation will continue through the proposed new contract.

Plans for monitoring and management of the contract

26. The Council monitors FM Conway's performance against the pre-defined performance indicators which have increased year by year for the period of the Contract. The performance payments attached to those indicators which may be added or subtracted from monthly payments provide an incentive for continuous improvement.
27. In this financial year the current contractor has only failed (marginally) on two out of the seven main KPI's and is above target on four out of the seven and thus their performance is considered to be acceptable. The KPI's are :
 - KP1 1 hour emergency response
 - KP2 Inspections according to programme

- KP3 Accuracy and completeness of inspection reports
 - KP4 24 hour emergency response
 - KP5 Correct identifications and prioritisation of defects
 - KP6 Safety and workmanship
 - KP7 Accrument measurement of works
28. Concurrently the Council undertakes its own assessment and monitoring to verify the accuracy of information given by the contractor in respect of performance. Severe financial penalties may be applied if the Contractor is found to have falsified any of his submissions. There have been no instances of false accounting.
29. The contract and operations are reviewed during a series of meetings including; operational meetings (Weekly) between technicians and local contract management, strategic meetings (Monthly) between senior client and contractor management at an annual contract review meeting. This review board is formed of the Head of Service, BU Managers and FMC Company Directors and managers. This range of meetings ensures the successful and efficient operation of the contract and allows for the review of contract performance and provision of service.

Community impact statement

30. The highways term maintenance contract is a borough wide contract and service. It is designed to deliver both timely and responsive repairs and scheme and project implementation.
31. The impact of the service affects all communities, groups, residents and visitors
32. Direct benefits of a well maintained and improved highway infrastructure are the contribution to the quality of life and safety of all users.
33. FM Conway were the partner contractor for the installation of the award winning Walworth Road and Salisbury Road Projects. These projects won awards for Walking and Public Realm, Living Streets and Road Safety.

Environmental and sustainability considerations

34. FM Conway has pioneered recycling of both highway arisings (concrete, asphalt, sub-base, kerbs, paving etc.) and drain gully waste, and provides Southwark a service which recycles all of the arisings from projects through their recycling plant at Dartford.
35. FM Conway have through their own static crushing, washing and grading plants recovered and recycled over 22,000 tonnes of materials from Southwark, and used over 32,000 tonnes of recycled materials on works in Southwark since July 2010.

Economic considerations

36. Approval of this report will allow for the procurement of longer term highway and design contracts to be done by Southwark in parallel with the London Alliance Procurement process and for the results to be evaluated and compared for the greatest economic benefit.

Market considerations

37. FM Conway have capacity for and are delivering 13 term contracts in London Boroughs, Additionally they deliver ad-hoc contracts across London and the South East. FM Conway's last accounts declared a turnover of in excess of £124m.

Staffing/procurement implications

38. As a supply contract there are no additional staffing implications above and beyond the current working arrangements.

Financial implications

39. The approval of the proposed extension will provide estimated savings which will be used to undertake additional work under the contract.
40. The anticipated annual basic cost for the Contract shown below equates to the provision available for these works and fees within the Asset Management revenue and capital budgets. This budget will support the identified core services of Inspections, highways and structures maintenance, gulley cleaning and winter services (gritting). The proposed contract will not commit the council to any minimum level of expenditure during the year.

Legal implications

41. It is necessary that Southwark Council as a Highway Authority meets the statutory requirement that the highway network is 'kept safe' – Highways Act 1980 Section 41.
42. In practice there is a responsibility placed on the Local Authority to maintain and improve the highway to the benefit of all users at public expense. The accepted mechanism to achieve this is through the appointment of term contractors.

Consultations

43. No consultation has been carried out.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

44. The Strategic Director of Communities, Law & Governance ("SDCLG", acting through the Contracts Section) has advised officers in connection with the procurement of the proposed contract and notes the content of this report. The existing contract was procured as a contract for services in line with EU Procurement Regulations, and in view of the expected value of the services to be delivered across the duration of the new contract the procurement falls within the definition of a Strategic Procurement as prescribed by the council's Contract Standing Orders ("CSOs"), which means that the decisions on the approval of the procurement strategy and proposed contract award must be taken by the cabinet, after taking advice from the Corporate Contract Review Board. The Procurement Project Plan contained within paragraph 13 confirms the timing of the CCRB's appraisal of this report.

45. The EU Procurement Regulations permit the negotiation of a contract without the prior publication of a contract notice in limited circumstances, and the grounds on which this can be done are subject to narrow interpretation. One of the prescribed grounds is where the contracting authority requires additional services which were not included in the original contract but which, through unforeseen circumstances have become necessary and such services cannot, for technical or economic reasons be provided separately from those under the original contract without major inconvenience to the contracting authority. The report explains that approval of a new contract is necessary in order to enable the procurement of a new long-term integrated contract to be completed and a separate Gateway 1 report has been produced and submitted to cabinet for that purpose.
46. The proposed procurement is consistent with relevant corporate policy and will assist the council to fulfil its statutory duties as local highway authority.
47. As a key decision, the implementation of a decision to approve the award of the proposed contract will be subject to call-in in line with the requirements of the Council Constitution. The report confirms that this matter has been noted on the Forward Plan. Paragraph 2 confirms that the award of the proposed interim contract will be given legal effect by way of a formal variation of the existing contract with FM Conway Ltd.

Finance Director

48. This combined gateway one and two report recommends that the Cabinet approves the procurement strategy for the Integrated Highways Term Contract, gives approval to allow negotiation with a single supplier in line with Contract Standing Orders (CSO 4.4.3) and approves the award of a contract to FM Conway for a period of nine months at an estimated cost as reported in the separate closed version of this gateway report. The Finance Director notes that capital and revenue budgetary provision exists to support this contract variation and that savings made during negotiations are available for additional work under the contract. The Finance Director also notes that the contract variation does not commit the council to a minimum level of expenditure. Officer time to effect the recommendations will be contained within existing budgeted resources.

Head of Procurement

49. This combined Gateway 1 and 2 report seeks the Cabinet's approval of the procurement strategy to allow single supplier negotiations and award of the Integrated Highways - Maintenance, Project delivery and Professional Services.
50. The report details the background to the services contained within the contract and the options that were considered. However, the report confirms that alternative options were considered impractical leaving the continuation of services with FM Conway as the most suitable way forward. Due to the specialist nature of the services and the start-up costs associated with their delivery, it is not considered that a new service provider could be brought in at short notice at a lower cost whilst maintaining standards.

51. The Council's relationship with the FM Conway is described as being good and although there have been a couple of areas of marginal under-performance most KPIs are above target.
52. The Council's procurement of a new contract to replace this one and the Professional Services contract will be running whilst a similar LoHAC tender for a pan-London integrated highways contract also takes place. The tight timescales mean that sufficient resources will need to be focussed on the procurement and that the LoHAC procurement itself is not delayed if the process is to be completed by 31 March 2013.
53. The client section will be responsible for monitoring this contract through regular meetings and monitoring arrangements as detailed in the report. These will include operational and strategic meetings as well as an agreed schedule of KPIs.
54. This matter has been reviewed by both the Environment and Leisure Departmental and Corporate Contract Review Boards and recommended changes have been incorporated into this final report.
55. This concurrent has been provided by the Head of Environment and Leisure Procurement.

REASONS FOR URGENCY

56. The approval of this gateway report by the Cabinet on 7 February 2012 would permit the posting of the OJEU Notice on 14 March 2012. Unfortunately there is no flexibility within the procurement programme to accommodate any slippage. A delay in the posting of the OJEU Notice will result in delays in achieving the remaining procurement milestones and inability to have the new contract ready to commence 1 April 2013. The services delivered by the new contract include reactive maintenance activities in response to emergencies. There is currently no alternative provision for these services.

REASONS FOR LATENESS

57. The closed version of this report was published on the closed agenda for this meeting on 30 January 2012. However due to an oversight this open version of the report was not submitted at the same time.

BACKGROUND DOCUMENTS

Background documents	Held At	Contact
Highway Maintenance Contract	Copeland Road Depot	Mick Lucas 020 7525 1140

AUDIT TRAIL

Cabinet Member	Councillor Barrie Hargrove, Cabinet Member for Transport, Environment & Recycling		
Lead Officer	Des Waters, Head of Public Realm		
Report Author	Mick Lucas, Public Realm Asset Manager		
Version	Final		
Dated	2 February 2012		
Key Decision?	Yes	If yes, date appeared on forward plan	November 2011
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments Sought	Comments included
Strategic Director of Communities, Law & Governance		Yes	Yes
Finance Director		Yes	Yes
Head of Procurement (Head of Environment and Leisure Procurement)		Yes	Yes
Contract Review Boards			
Departmental Contract Review Board		Yes	Yes
Corporate Contract Review Board		Yes	Yes
Cabinet Member		Yes	Yes
Date final report sent to Constitutional Team			2 February 2012