

<b>Item No.</b> 12.	<b>Classification:</b> Open	<b>Date:</b> 13 March 2018	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 3 – Variation Decision Highways and Professional Services – Extension of existing contract	
<b>Ward(s) or groups affected:</b>		All Wards	
<b>Cabinet Member:</b>		Councillor Ian Wingfield, Environment and the Public Realm	

## **FOREWORD – COUNCILLOR IAN WINGFIELD, CABINET MEMBER FOR ENVIRONMENT AND THE PUBLIC REALM**

The Council as Highway Authority has a statutory responsibility to ensure the highway network is maintained to a safe standard. In addition the Council has made a commitment to improve the highway network where feasible, in particular to promote the Councils fairer future promises.

Since 2013 the maintenance, repairs and improvements of the highways under the responsibility of the Council have been carried out by Conway Aecom Ltd under the Highways and Professional Services contract. This contract expires in March 2019 with an extension allowable for any period up to two years. I am pleased to support the recommendations to extend this contract for a period up to the two year limit.

Extending the current contract will ensure the council gets the best possible deal from the market and will allow Officers to assess market conditions within the London area and determine the most appropriate and beneficial delivery method on expiry of this contract. An assessment can be made on the optimum tender period for any future contracts to ensure continued best value for the residents, businesses and visitors to Southwark.

## **RECOMMENDATIONS**

1. That the Cabinet approve the extension of the Highways and Professional Services (HAPS) contract with Conway Aecom Ltd from its expiry on 31 March 2019 at a cost of approximately £20m for a maximum period (subject to recommendation 2) of up to two years and as further detailed in paragraph 26.
2. That Cabinet delegates the approval of the period of extension (within the 2 year maximum) to the strategic director for environment and social regeneration.
3. That the Cabinet note that a further Gateway 0 report will be submitted to the relevant cabinet member for consideration setting out the future delivery options for highways services subsequent to this extension.
4. The Cabinet notes the intention to provide resilience by entering into framework agreements with alternative suppliers for both scheme works delivery and professional design services, agreed under a separate governance process.

## BACKGROUND INFORMATION

5. Under the Highways Act 1980 the council, as Highway Authority for most of the public roads and pavements within the borough, has a statutory responsibility to ensure those public highways are maintained to a safe standard. This will cover everything from a standard “pothole” repair to gritting the roads and pavements deemed necessary during freezing conditions and snowfall. In addition to these statutory duties the council also has a responsibility to endeavour to improve the highway network where possible. This is carried out using capital funding which can be from Southwark’s own budgets or from external partners such as Transport for London (TfL) or through developers’ S106 / Community Infrastructure Levy (CIL) funds.
6. Most London boroughs generally deliver highways services through individual service providers on contracts similar to the current HAPS contract. Some of the London boroughs have signed up to the TfL London Highways Alliance Contract (LoHAC) to deliver their services. The LoHAC contracts expire on 31 March 2021 with no option for extension. One London borough – Hounslow – delivers its service through a PFI contract. The highways maintenance, highways improvements and highways professional services market is very competitive throughout the UK. This is even more so in London due to the close proximity of 34 different highway authorities (32 London Boroughs + City of London + Transport for London) and a number of major development sites that require roads, pavements, cycleways, open spaces etc.
7. Southwark Council currently provides this service through the Highways and Professional Services Contract. This contract was tendered in 2012 under 3 different Lots:
  - Lot A – Highways Maintenance
  - Lot B – Project Delivery (Works)
  - Lot C – Professional Services
8. The contract value was estimated to be £66m over 6 years, increasing to £87m over the maximum 8 year period. The contract commenced on 1 April 2013 for a duration of 6 years taking the contract through to an expiry date of 31 March 2019. There is an option for Southwark Council to extend the contract for any duration up to a maximum of 2 years, requiring a minimum of 3 months notice to Conway Aecom Ltd. This contract was awarded at a time when market rates were low and this contract has provided good value for Southwark Council, particularly in Lot A – Highway Maintenance.
9. Although Conway Aecom Ltd has met or exceeded most of the KPIs in earlier years they have struggled to meet certain KPIs as might be expected in a contract of this size and complexity and deliver some works to the required programme. However Improvement Plans have been put in place and performance has improved to a good level in the 2017-18 financial year.
10. A number of insurance claims are still to be resolved with Conway Aecom. Discussions and meetings between Conway Aecom staff and Officers are ongoing to seek satisfactory resolution.

## **KEY ISSUES FOR CONSIDERATION**

### **Key Aspects of Proposed Variation**

11. This variation will extend the existing HAPS contract with Conway Aecom Ltd for a maximum period of 2 years. The anticipated value of this variation is approximately £10m per annum, depending on available budgets, giving the variation a total maximum value of £20m, which equates to 30% of the total original contract value.
12. The Head of Highways, as the contractual Service Manager is required to provide notice of any extension award to Conway Aecom Ltd at least 3 months before the expiry of the contract. Conway Aecom Ltd is obliged to accept any extension to the contract.

### **Reasons for Variation**

13. The extension to the current highways and professional services contract is required to ensure continuity of service including the statutory duty to maintain the highways in a safe condition. Detailed assessment of the industry has highlighted that renewing the contract in April 2019 would not deliver the best outcome for Southwark and that extending existing arrangements as set out in this report will maximize our ability to pick the optimum time to go out to the market.

### **Future Proposals for this Service**

14. It is proposed to extend the current contract to allow a full business appraisal of the future delivery options. During the extension period it is proposed to add additional resilience by ensuring the council has framework options available for both works and professional services in addition to this contract.

### **Alternative Options Considered**

15. There are two fundamental options for the continued delivery of an effective highway management and maintenance service;
  - 1 End the existing contract in March 2019 and replace with an alternative delivery model
  - 2 Extend the current contract to allow careful consideration of the alternative options and select the optimum tender period.

### **OPTION 1: Do not extend the contract and consider alternative options for delivery from April 2019**

16. This option is to allow the current contract to terminate in March 2019 and consider alternative delivery options from that date. These alternative delivery options are detailed in the tables below.
17. Regarding sub option 1A TfL have entered into Contracts with four separate suppliers on an area basis and CVU (a joint venture between Colas, Volker Highways and URS) is the Supplier for the Central area under which Southwark falls. Since the award of that contract Aecom Ltd have bought out URS. Under the Contract between TfL and CVU boroughs can procure works and services

through the LoHAC Framework. Southwark are procuring a Call Off Agreement with CVU for project delivery works. This Call Off Agreement could be extended to include maintenance and reactive services currently provided under the Lot A contract.

<b>1A – Use current LoHAC framework contract</b>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• Minimal procurement and contract set up costs</li> <li>• Contractor has been through competitive process and rates are generally compatible to current HAPS rates</li> <li>• The Contractor is known and proven within London</li> <li>• Possible synergies with TfL projects</li> <li>• LoHAC contract conditions very similar to HAPS contract conditions so minimal learning curve for Officers</li> <li>• Since Aecom have purchased URS the same company is responsible for design works on both the HAPS and LoHAC contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Current LoHAC contract expires in March 2021 with no option for extension</li> <li>• TUPE implications with high costs and complexity and only 2 years to absorb the costs</li> <li>• Materials and standard details are not always exactly the same so some rates will need to be agreed</li> <li>• Works ordering and finance systems would need to be provided</li> <li>• CVU's main depot is based in Beckton which would increase travel time and pollution</li> </ul>

18. These arrangements would provide a delivery option for the service by a Contractor which is experienced in this type of work and has successfully been through a competitive tender process. However, the contract expires in March 2021 with some uncertainty over the future of these contracts due to TfL budget constraints. Therefore, there would be TUPE and set up costs which the supplier would need to recover over a two year period which make this option financially unviable.
19. Therefore this option is not recommended.

1B – Bring services in-house	
Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Direct access to the DLO who will deliver repairs by Council employees</li> <li>• Possible division / department resource sharing where skill set allows</li> <li>• Single point of contact within Highways Management Team with direct responsibility for operatives</li> </ul>	<ul style="list-style-type: none"> <li>• TUPE cost implications for Council</li> <li>• This would result in a strategic change of policy and direction for which there is no direct management experience</li> <li>• The timescales would be too short at this time to ensure a workable solution is introduced</li> <li>• Agreements with material suppliers needed. Limited purchase power is likely to result in higher costs.</li> <li>• Agreements with plant suppliers needed. Limited purchase power is likely to result in higher costs.</li> <li>• Agreements with specialist sub-contractors needed. Limited purchase power is likely to result in higher costs.</li> <li>• Southwark Council take on all liabilities</li> <li>• Specialist design services would still need to be procured</li> <li>• Need to consider how will peaks and troughs in work loads for both works and design would be taken care of</li> </ul>

20. This approach could provide greater control over the operatives providing the service on the ground. However, there would be substantial initial capital expenditure to obtain the necessary plant and equipment. As an example a single road planing machine (that removes the old road surface) of the size often used in Southwark would cost around £300k for a second hand one in reasonable condition and around 5 years old. A piece of equipment like this would be necessary to carry out the works but would not be in use all the time. The TUPE cost implications would also need to be fully explored. Agreements with a number of suppliers for both plant and materials as well as specialist sub-contractors would need to be made. Due to restricted buying power compared to most contractors higher costs would be incurred.

21. Therefore this option is not recommended.

1C – Re-tender	
Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Confidence that current market rates have been tested but these may not be as beneficial as the existing HAPS rates</li> <li>• Chance to enhance some sections of the contract</li> <li>• Any new supplier may have fresh ideas</li> <li>• Potential performance improvements</li> </ul>	<ul style="list-style-type: none"> <li>• The new rates are likely to be more expensive than the current rates as the market is not as competitive as it was during the HAPS tender</li> <li>• Does not allow the Council to assess whether any new TfL contract would be appropriate to its needs due to timing</li> <li>• Potential loss of knowledge and experience</li> <li>• Does not align with knowledge of the market in relation to timing</li> </ul>

22. Whilst a formal re-tender would demonstrate current market best value and give the opportunity to review the Council's delivery strategy and contract documentation to maximise the benefit to the Council, retendering now may not provide best value for money for the Council compared to the current contract. Sufficient time should be allowed to fully review all options when further details of the proposed TfL contracts are known and an assessment of our neighbouring boroughs current and proposed service delivery can be completed. TfL anticipate a decision on their proposed contracts strategy by late 2018 and Southwark should review and consider this option. Lewisham have recently awarded a number of smaller contracts for specific operations e.g. carriageway resurfacing, and their experience from this approach should be considered. A joint procurement arrangement with suitable neighbouring boroughs, taking into account their contract timescales should also be discussed for benefits to Southwark Council. The consequences of taking some services in house should also be assessed. Officers' professional knowledge of the market also suggests that tendering for provision of a new contract from April 2019 may not lead to the best outcome for the Council due to other expected activity taking place in the market at that time.

23. Therefore, this option is not recommended.

**OPTION 2: Extend the current contract whilst considering the optimum re-tender period and alternative delivery options**

24. This option is to extend the current contract for up to two years to allow officers to determine the optimum period to re-tender in terms of anticipated market activity and industry output whilst allowing sufficient time to thoroughly review all options.

<b>Extend contract for optimum period</b>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• The current contract provides competitive rates</li> <li>• Established relationship and the areas that need improvement are known</li> <li>• No loss of experience or knowledge from current supplier</li> <li>• Option for other suppliers to deliver services through alternative framework arrangements should the need arise</li> <li>• Greater flexibility and confidence of scheme delivery and budget spend</li> <li>• Limited procurement costs / staff time lost</li> <li>• No immediate issues relating to TUPE</li> <li>• Supply chain and pan-London experience retained as Conway/Aecom are a leading supplier of Highways Services in London</li> <li>• Allows the Council time to consider delivery and contract strategies such as shared services or in-house delivery</li> <li>• Allows the Council to monitor how the new TFL contract takes shape and assess its suitability for us</li> <li>• Allows the Council to assess how recently let contracts in other boroughs (Lewisham for example) perform</li> <li>• Extension period can be granted to suit most beneficial contract tender period</li> </ul>	<ul style="list-style-type: none"> <li>• Although Conway Aecom have met most of the required KPIs they have struggled to meet certain KPIs and deliver some works to the required programme. Improvement Plans have been put in place and performance has improved to an acceptable level in 17/18</li> <li>• Capital budgets, including TfL funding, is currently reducing making profit margins for Conway Aecom even tighter</li> <li>• Whereas Conway Aecom are obliged to accept any extension award they may become an unwilling partner due to the reduced budgets and tight profit margins</li> </ul>

25. This option would retain the current provider of core highways services. However, officers also propose adding additional resilience through the use of other frameworks to mitigate any future delivery problems and provide back up (the HAPS contract with Conway Aecom is non-exclusive). Through agreements already in place, three suppliers are available through the Ealing Framework for design works. As detailed in Section 13 Southwark are procuring a Call Off Agreement with CVU for project delivery works. This Call Off Agreement will be extended to include maintenance and reactive services currently provided under

the Lot A contract as a contingency plan. The use of these contractors can be tailored based on the performance of Conway Aecom Ltd.

### **Conclusion**

26. Therefore, it is recommended to approve an extension of the current contract in principle for a maximum period of up to 24 months (until 31 March 2021). Officers will continue to monitor market intelligence to determine the optimum tender period to maximise the benefits to Southwark Council. Officers will evaluate the delivery options and prepare tender and contract documentation during 2018 to ensure readiness to tender at the optimum time. A separate Gateway 1 will be issued for determination prior to commencing the tender process. As a result it is proposed that the exact duration of the extension will be determined by the Strategic Director for Environment and Social Regeneration.

### **Timescales for the next steps**

27. Investigation and assessment of the available options for the provision of the service delivery on expiry of the current HAPS contract commenced in January 2018. This will include further discussions with TfL regarding the format of their contracts upon expiry of the current LoHAC contracts. TfL anticipate further details of their preferred delivery option by Spring 2018. The investigation will also include an assessment of the recent contracts awarded by Lewisham Council for their Capital Renewal works. Discussions with Lambeth Council will also be held regarding their highways service delivery proposals. This will be reported through the appropriate process to the relevant cabinet member in a Gateway 0 report. It is anticipated this report will be for consideration by the cabinet member in early Summer 2018. To ensure tender and contract documents will be ready at the earliest opportunity these will start to be compiled by early Spring 2018 with an anticipated completion date of the end of 2018.

### **Identified risks for the variation**

28. The Council is confident that the current contract management arrangements have ensured good performance and that this will continue. However, in case the performance of the current provider falls below expectations mitigation measures have been put in place for continued service delivery. These measures include Southwark joining the Ealing Framework for consultancy services and entering into a call-off agreement for works with CVU through the TfL Framework Contract.

### **Policy implications**

29. Under the Council's Fairer Future Promises there are a number of commitments which improvements to the highways network will help the Council achieve. Improvements to the footways and cycleways will encourage residents and visitors to adopt a more sustainable mode of transport than a motor vehicle to help provide a greener borough and encourage more active and healthy lifestyles.

### **Contract management and monitoring**

30. The current contract management and monitoring arrangements will remain in place during the extended contract period. This includes enhanced monitoring of the sections of the contract that were previously underperforming particularly in



2016/17 and have improved during 2017/18.

### **Community impact statement**

31. People in all areas of the borough are affected by the quality of the public highway and its assets.
32. The very young and the elderly would benefit the most by having a footway network which is well maintained and safe to use.
33. The award of a contract extension is not considered to have any detrimental impact on local people and communities.
34. All service elements contained in the contracts are a borough-wide service. The contract specification addresses planning and delivery of planned and responsive works and seeks to improve quality of the service and product and customer satisfaction.
35. The impact of the service will affect all communities / groups, residents, businesses, visitors and those that pass through the borough and will in turn improve the quality of life to all. Direct benefits are a well maintained infrastructure which makes an important contribution to the safety of all. Continued emphasis on maintenance will especially benefit the most vulnerable members of the community i.e. the elderly, the disabled and young children.
36. Conway Aecom have been assisting the Council with its aim of meeting the "Safer Lorries Safer Cycling" pledge in relation to vehicles used on the contract and their HGV movements in and around the borough.

### **Social Value considerations**

37. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The social value considerations included in the contract (as outlined in the Gateway 1 report) are set out in the following paragraphs.

### **Economic considerations**

38. As part of their quality submission Conway Aecom provided evidence of previously engaging local small and medium sized enterprises with a view to incorporating them into the supply chain. A commitment to repeat this for Lots A and B during the contract period was made. Additionally the commitment to making full use of the talents, skills and experience of the community and individuals that exist in Southwark has been undertaken.
39. A contract clause ensures that all contractor, sub-contractor casual and agency staff employed or engaged in providing these services are paid an equivalent hourly wage which is equal to or exceeds the London Living Wage (LLW).

### **Social considerations**

40. Conway Aecom has been providing training opportunities to Southwark residents based on the level of spend by the council. Conway Aecom has welcomed working

in partnership with Southwark Works to deliver the commitment. At the beginning of 2018 Conway Aecom are providing the following number of Apprenticeship opportunities for local people through this contract:

- 3 x working in professional services (Design)
- 3 x working within Term Maintenance (On the ground)
- 1 x working in Term Maintenance (Commercial)
- 1 x working in Structures (Civil Engineering)

41. The HAPS contract was tendered prior to Southwark Councils policy of inserting a specific clause relating to the suppliers obligation to comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations"). However, this was a legal requirement prior to the tender period and contract award. Although there have been no incidents relating to this requirement, to avoid any possible uncertainty Conway Aecom have reconfirmed they will comply with this requirement for all the remaining duration of this contract.

### **Environmental / sustainability considerations**

42. The contract adheres to industry best practice on sustainability and arisings from highways maintenance is recycled and re-used in the borough whenever possible.
43. The contract specifications set out the need for the completion of specific project / works related environmental assessments including impact on fauna, flora, soil and water and installation of required control measures where necessary.
44. The contract specifications demand Euro VI standard engines on new fleet in this contract. The minimum standard for existing fleet is Euro V. This aims to introduce stricter limits on pollutant emissions of nitrogen particulates and oxides.
45. The entire fleet utilised in service delivery operates on diesel with 5% bio-ethanol, reducing carbon emissions. All cars in the fleet are either diesel or hybrid with minimum emissions to Euro V standards.
46. The use of dust suppression techniques for all construction activities are a contractual requirement. This is achieved by installing dust screening and dampening on all surfaces to prevent dust becoming airborne. Road planers are fitted with systems using computer controls to manage suppression whilst minimising water consumption.
47. As part of the commitment to the contract Conway Aecom have set a self-imposed target to recycle a minimum of 95% water / waste from gully cleaning operations and surplus materials or waste arising from construction activities.

### **Resource implications**

48. There are no implications on resources resulting from this report.

### **Legal implications**

49. There are no legal implications resulting from this report.

## **Financial implications**

50. The proposed contract extension will not commit the Council to any minimum level of expenditure during any financial year. This contract provides no exclusivity to Conway Aecom and the Council retains the option to use other delivery mechanisms as detailed above.
51. The base costs on Lots A and B are subject to an inflationary mechanism. The agreed mechanism has a saving built into the calculation to account for the efficiencies of the supplier. For Lot C, the contract is based on open-book actual cost plus principles so there is no inflationary indexation. However, there are KPIs built into the contract to ensure that any inflationary pressure in the contract is maintained at the market average level. Additionally, the non-exclusive nature of the contract gives the Council the right to procure services elsewhere if CA is not felt to be giving value for money.
52. The works undertaken under Lot A – Highway Maintenance will continue to be funded from the Asset Management revenue budget. This budget will support the identified core services of inspections, highways and structures maintenance, gully cleaning and winter services (gritting) and the value of work ordered can be planned to be within budget resources available for the financial year.
53. The anticipated annual expenditure for Lot B works will continue to be funded through capital receipts, Local Implementation Plan funding and ad-hoc project grants / funds.
54. The anticipated annual expenditure for Lot C services will continue to be charged to either capital or revenue, but these costs are mostly recovered through grants or external income.

## **Consultation**

55. No consultation is required.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

56. No further comments received from Head of Procurement.

### **Director of Law and Democracy**

57. This report seeks approval of the extension of an existing contract with Conway Aecom Ltd for highways and professional services for a maximum period of up to two years, together with authorisation to delegate the approval of the period of extension to the Strategic Director for Environment and Social Regeneration. The contract contains express provision for such extension.
58. Under the council's Contract Standing Orders (CSOs), any decision to allow a variation of a contract is reserved to the cabinet or cabinet committee where the variation and its value comprise a Strategic Procurement (as defined in the CSOs). CSOs further provide that a variation decision may only be made if the expenditure has been included in approved revenue or capital estimates or has

been otherwise approved by, or on behalf of the council. Paragraphs 52 to 54 of this report confirm how the proposed additional expenditure will be funded.

59. As noted in paragraph 41 the statutory obligations relating to the prevention of “blacklisting” have been incorporated in the contract conditions.
60. The community impact statement set out in this report notes that there will be continued emphasis on the performance and monitoring of maintenance obligations under the contract, which is intended to benefit vulnerable members of the local community. This is consistent with the Public Sector Equality Duty contained in section 149 of the Equality Act 2010 which, amongst other things requires the council, in making procurement decisions to consider and have due regard to any effects of the decision on the community at large and on people identified as possessing “protected characteristics”, as defined in the Act.

**Strategic Director of Finance and Governance (FC17/075)**

61. The Strategic Director of Finance and Governance notes the recommendations in this report for the extension of the Highways and Professional Services (HAPS) contract for up to two years from 1/4/2019. This will affect the general fund revenue budget and capital programme in 2019-20 and 2020-21.
62. The council’s general fund revenue budget for 2019-20 will be set in February 2019. It is important that the cost of the work ordered under the contract is managed within identified resources.

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
None.		

**APPENDICES**

No.	Title
None.	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Ian Wingfield, Environment and the Public Realm	
<b>Lead Officer</b>	Deborah Collins, Strategic Director for Environment and Social Regeneration	
<b>Report Author</b>	Matthew Hill, Head of Highways	
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<b>Dated</b>	1 March 2018	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	No
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		1 March 2018