

<b>Item No.</b> 14.	<b>Classification:</b> Open	<b>Date:</b> 2 February 2021	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 1 – Access Agreement for Transport for London Framework Contracts	
<b>Ward(s) or groups affected:</b>		Borough wide	
<b>Cabinet Member:</b>		Councillor Catherine Rose, Leisure, Environment and Roads	

## **FOREWORD – COUNCILLOR CATHERINE ROSE, CABINET MEMBER FOR LEISURE, ENVIRONMENT AND ROADS**

During 2019 / 2020 Transport for London carried out competitive tenders to appoint contractors to two new framework agreements to carry out their surface transport construction works. These frameworks have been made available to all London Boroughs and Greater London Authority affiliated organisations through an access agreement. The two framework agreements are the Highways Maintenance and Projects framework agreement and the Surface Transport Infrastructure Construction framework agreement. The framework agreements commence on 1 April 2021 for an initial duration of eight years.

This report seeks the approval of Cabinet for the council to enter in to access agreements with Transport for London for these frameworks. There is no direct cost to the council to enter in to the framework agreements. The benefit of entering in to the framework agreements is to give the council greater options for delivering infrastructure projects and improvements over and above the council's own highway works contracts.

The approach set out will ensure that Southwark Council can ensure the best possible construction delivery option in terms of price, quality, programme and social value and I recommend this report to the Cabinet.

## **RECOMMENDATION**

1. That the Cabinet approves the council entering into agreements with Transport for London (TfL) for access to their Surface Transport Infrastructure Construction (STIC) framework agreement and to their Highways Maintenance and Projects framework agreement (HMPF) from 1 April 2021 for an initial duration of eight years for potential future award of construction projects following comparison of price, quality, programme and social value with the Council's appointed contractor for highways maintenance and projects works.

## **BACKGROUND INFORMATION**

2. TfL carried out a competitive tender procedure with negotiation during 2019 / 2020 to appoint contractors to commence new framework agreements on 1 April 2021 to replace their current London Highway Alliance Contracts. Under the framework agreements all London Boroughs and Greater London Authority (GLA) affiliated organisations can enter into an access agreement with TfL to appoint the contractors on the frameworks.
3. Works under the STIC framework will cover all capital delivery improvements on highways, structures and drainage assets. TfL intend to appoint five contractors under the STIC framework and each contractor will have to be willing and capable of working anywhere in London. Boroughs can appoint any of the contractors following a mini competition.
4. Works under the HMPF framework will cover all routine and reactive repairs on the highway network including footway replacement and carriageway resurfacing maintenance schemes. This framework is split into three areas within London – north, central and south – and Southwark is within the central area. TfL have appointed one contractor per area and Boroughs can directly award works to the contractor appointed to their area or carry out a mini competition between all three contractors.
5. The council has a construction works contract with FM Conway Ltd to provide the construction delivery of project works on highways, structures and drainage assets. The Southwark Council Highways Division will manage all the works contracts and contractors, whether they be FM Conway Ltd appointed directly under the Southwark Highways Works Contract or a contractor appointed under one of the TfL framework agreements.

### **Summary of the business case / justification**

6. The purpose of the council accessing these framework agreements is to ensure the council receives best value in the delivery of infrastructure improvement schemes on their highways, structures and drainage assets.
7. At the time of the decision to tender the Southwark Highways Works Contract ("the Southwark Contract") no final decision had been taken by TfL regarding their proposals for highway maintenance and works contracts on the expiry of their London Highway Alliance Contracts (LoHAC). This helped the council decide at the time that procurement of new contracts was essential for the continued delivery of this core service.
8. Once details of any proposed construction work have been issued to the appropriate framework contractors their proposals can be assessed against each other and against FM Conway Ltd proposals.
9. Prior to the consideration of appointing a TfL framework contractor council officers will undertake a project appraisal to determine which delivery model is the most likely to provide the most advantageous outcome for the council.

The contractor offering the most advantageous proposal for that particular project can be awarded the works.

10. This report does not commit the council in spending any additional money. There is no direct cost to the council to enter the access agreement to the framework agreements with TfL.
11. Improvements to the highways network will help the council achieve a number of their Fairer Future Commitments. 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 a healthier life. A number of highway improvement schemes are implemented alongside other initiatives to help create a vibrant Southwark.
12. The works in scope can be summarised as follows:
  - Construction works to highways, structures and drainage assets
  - Infrastructure improvement / major maintenance schemes
  - Capital project delivery
  - Carriageway resurfacing
  - Footway renewal.

## **STRATEGIC SERVICE DELIVERY OPTIONS AND ASSESSMENT**

13. This delivery option is in addition to the current Southwark Contract between the council and FM Conway Ltd. That contract commenced in July 2020 and is proposed to last until March 2026 with an option to extend the contract by any period up to two years at the council's discretion.
14. Any scheme where the construction works align to the scope of the STIC framework can be sent to the five STIC framework contractors on a call-off request form. Each contractor can decide to opt-out of the process by notifying the Borough within two days of receiving the call-off request form. Those contractors wishing to proceed then issue a call off proposal to the council within 20 days of receiving the call-off request form. The council can then compare the call off proposals received from each contractor with the Southwark Contract. Following assessment of each proposal the council can award the construction works to the contractor demonstrating the best proposal for the council. All awards of works will be processed in accordance with Contract Standing Orders.
15. All construction works could be awarded directly to FM Conway Ltd under the Southwark Contract. It is the council's intention that the majority of routine works and schemes are awarded directly to FM Conway Ltd under this contract. However, although this contract was awarded following a competitive tender process, this does not guarantee the optimum delivery option for some elements of work and major construction schemes particularly where complex temporary traffic management arrangements are

required. The terms of the Southwark Contract expressly permit the council to deliver all or any part of the contracted works itself or through a third party.

## **KEY ISSUES FOR CONSIDERATION**

### **Options for delivery route**

#### **Do Nothing**

16. It is feasible to utilise the Southwark Contract to deliver these works. The scope of this contract will cover a significant portion of the expected construction works. This contract was awarded following a competitive tender process to the most economically advantageous tenderer at that time. However, the TfL framework agreements have been tendered more recently and may be more competitive in terms of prices or may provide additional benefits. Therefore, this delivery option is not recommended.

#### **Voluntary Sector / Not for Profit organisations**

17. There are no known voluntary sector or not for profit organisations that provide the required works. Therefore, this delivery option is not recommended.

#### **Tender each scheme**

18. Each works package could be competitively tendered. There is a possibility this process would provide the most economically beneficial outcome to the council in terms of cost, quality and social value for the construction works themselves. Each tender package could be written with the particular requirements of that scheme in mind. However, significant officer resource would be needed to prepare tender documents for each construction package. Full tender documentation would be needed for each scheme along with resources to manage the tender process and tenderers clarifications and queries. Once tenders are received they need to undergo a compliance check and be fully evaluated to assess the most beneficial tender. The tender process would add months on to the overall programme for each scheme. The flexibility of the scheme would be reduced as no significant design or delivery method changes could be made after the tender had been issued without attracting a price variation for which there would be no benchmark cost. Therefore, this delivery option is not recommended.

#### **Procure the works through a Framework**

19. TfL is commencing two new framework agreements in April 2021. The frameworks will be open for any London Borough or GLA / TfL associated organisation to join. There will be two separate frameworks that would be suitable for use for highway construction works. The contractors on both of these frameworks will have been appointed following a rigorous competitive tender process in line with TfL procurement regulations and policy. If a Borough wishes to procure a contractor to carry out some works under these

frameworks, the Borough can undertake a “mini-competition” inviting all the contractors on the appropriate framework to take part. This process is much quicker than a competitive tender for each scheme as the only information provided by the contractors is scheme specific information. Therefore, this option is recommended for approval to proceed.

### **Proposed procurement route**

#### **TfL Highways Maintenance and Projects Framework and TfL Surface Transport Infrastructure Construction Framework**

20. Southwark Council enter into access agreements with TfL for consideration of selecting the contractors who have been appointed by TfL on these frameworks. The access agreements do not commit Southwark to any spend via the frameworks and there is no direct cost to Southwark for entering into the access agreements.
21. When the construction phase of project improvement works approaches officers can determine if the construction works are best aligned to the HMPF or STIC frameworks.
22. Following the selection of the most appropriate framework officers can make an assessment using the tender information supplied by each contractor and any previous experience of the contractors. This will assess if it is likely that any of the TfL framework contractors will offer a more economically beneficial solution than the Southwark Contract.
23. If the assessment determines that a more economically beneficial solution may be provided under the TfL framework agreement then officers will prepare documents for a mini-competition of those framework contractors. These are based on standard TfL templates and the design drawings will have to be completed by this stage whichever delivery option is taken. A call off request form and all relevant documents and information will be issued to each of the contractors on that framework.
24. A TfL framework contractor has the option to withdraw from the mini-competition process by advising the council within two days of receiving the call off request form. If they wish to be considered the contractor submits a call off proposal within 20 working days (or other period as agreed) of the receipt of the call off request. As TfL framework contractors cannot increase their rates provided in the framework tender submission, the council will have confidence of the maximum cost of the construction works by the TfL framework contractor during the officers’ initial assessment.
25. The council will then assess each call off proposal received against the Southwark Contract. This evaluation will be carried out as determined by the call off proposal and will be in line with the council’s Contract Standing Orders.

26. Once the most beneficial delivery option has been determined, the appropriate award will be made in line with the requirements of the relevant contract or framework.
27. The estimated total value of the Southwark Contract for maintenance works over the full five years and nine months initial duration plus two year extension is £15.9m. The estimated total value of the Southwark Contract for project works over the full five years and nine months initial duration plus two year extension is £55.4m. The details of the budgets are shown in the table below:

Table 1 – Estimated values of construction works budgets (at Dec 2020)

Year	£000's				
	LBS Highway Capital	TfL CW4 / R2P	TfL LIP (m'ance) 3 <sup>rd</sup> party	TfL LIP (schemes ) 3 <sup>rd</sup> party	Dev't 3 <sup>rd</sup> party
2021/22	2,000	4,000	750	1,000	750
2022/23	3,400	3,000	750	2,000	750
2023/24	3,400	5,000	750	2,000	750
2024/25	4,000	3,000	750	2,500	750
2025/26	4,000		750	2,500	750
2026/27	4,000		750	3,000	750
2027/28	4,000		750	3,000	750
<b>Total</b>	<b>24,800</b>	<b>15,000</b>	<b>5,250</b>	<b>16,000</b>	<b>5,250</b>
	<b>66,300</b>				

### Identified risks for the framework agreement

28. The identified risks are listed below:

Table 2 – Risk table

No	Risk	Risk rating	Mitigation
1	Challenge from / relationship with FM Conway	M	FM Conway have been advised of Southwark's intentions and have accepted the reasons for doing so and are willing to work collaboratively with the council. The Southwark Contract tender and contract documents clearly state the contract is non-exclusive and there is no guarantee of volume or value of work. Southwark Highways have had a relationship and have worked collaboratively with FM Conway for several years and it is unlikely this will

No	Risk	Risk rating	Mitigation
			change.
2	Delivery via TfL framework may not be as efficient as the Southwark Contract	L	There will be no direct costs to the council for carrying out mini-competitions of the TfL framework contractors. There will be resource costs to carry out the mini-competition and evaluation, but this may be mitigated by more competitive works delivery. If delivery is deemed more efficient via the Southwark Contract then that option will be used.
3	Differing specifications and requirements of TfL framework	L	The TfL framework documents will be checked by relevant officers and any differences to the price, quality and social value requirements in the Southwark Contract will be highlighted. To ensure fair competition any differences can be addressed on the call off request document.
4	Possible TUPE liabilities.	L	As this is a framework agreement between TfL and the contractors it is highly unlikely there will be any TUPE liabilities to the council.
5	TfL framework contractors do not wish to work for Southwark	L	This is a possibility as they have the right to “opt-out” of works for Boroughs. However, there are up to eight contractors on the TfL frameworks and it’s highly unlikely they will all opt out. Meetings will be held with the TfL framework contractors soon after award stage to highlight works that are on offer.
6	Mini competitions will delay the start of the construction phase	L	The mini competitions will delay the start of the construction phase by around four weeks. A Task Order under the Southwark Contract can be issued for any schemes that cannot tolerate this delay.
7	As the mini competition can not be undertaken until the final design is complete, the opportunity for the contractor to support the design (and buildability) is lost.	L	Where deemed necessary by the project team a contractor can be appointed to undertake Early Contractor Involvement with the designers.
8	Implication of “Covid 19” working restrictions on delivery and there is	L	The TfL framework tenders were submitted prior to social and working restrictions being imposed because of the Covid 19 pandemic. There is an Early

No	Risk	Risk rating	Mitigation
	the potential of claims for additional costs to cover these restrictions		Warning Notice process in place as part of each framework agreement for any issues that may impact the programme, quality or price of the works.
9	The quality of work may be variable	L	As no single contractor is guaranteed work it is likely they will make best efforts to provide high quality.
10	Due to continued uncertainty over trading arrangements with the EU it may be difficult to procure any specialist services from companies based in the EU	L	This would be a rare occurrence as the UK has a very high calibre of specialist technical services in this industry.

### Key / Non Key decisions

29. As the works may involve a strategic procurement and will have a significant impact upon any ward within the Borough, this is a key decision.

### Policy Implications

30. Having an effective construction delivery service is an important component of delivering the council plan and fairer future commitments. In particular theme 3 – a greener borough, theme 5 – a healthier life and theme 8 – a vibrant Southwark will benefit from this service.

### Procurement Project Plan (Key Decisions)

Activity – Gateway Approval	Complete by:
Enter Gateway 1 decision on the Forward Plan	17/07/2020
DCRB Review Gateway 1	04/12/2020
CCRB Review Gateway 1	17/12/2020
Brief relevant cabinet member (over £100k)	26/11/2020
Notification of forthcoming decision – despatch of Cabinet agenda papers	25/01/2021
Approval of Gateway 1: Procurement strategy report	02/02/2021
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	15/02/2021

<b>Activity – Access Agreements with TfL</b>	<b>Complete by:</b>
Detailed review of TfL framework documentation	26/02/2021
Access Agreements with TfL	15/03/2021
Initial discussions with framework Contractors	26/03/2021
Start of TfL framework service period	01/04/2021
Initial TfL framework completion date	31/03/2029
TfL framework completion date – (if full extension(s) exercised)	31/03/2033

### **TUPE/Pensions implications**

31. It is unlikely that entering into call off contracts under these frameworks will present implications under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) or pensions implications for the council. Each call-off will be a new contract for discrete works, separate from project work being delivered under the Southwark Contract and there will be no existing contractor delivering the work being procured. TUPE should not apply on the expiry of the call-off contract as the works will have been completed. However, the position would need to be reviewed in the event that during the course of a call-off contract the council has to appoint a replacement contractor or in the unlikely event that the risk of an ongoing service provision change evolves.

### **Development of the tender documentation**

32. No tender documentation is required and TfL have provided template access agreements and call off request forms for use by Boroughs. These documents have been reviewed by officers to ensure the council's interests are protected and they comply with council policy. Once the access agreements have been executed the call off contract documents will be issued to Southwark and these will be reviewed by appropriate officers prior to use in line with the access documents.

### **Advertising the contract**

33. All advertising of the framework agreements has been carried out by TfL.

### **Evaluation of Call off Proposals**

34. All call off proposals received for each scheme will be evaluated for cost, quality, programme and social value in line with the details set out in the call off request and the TfL framework agreement.
35. All contract awards under the TfL framework agreements will be made following the completion of a Gateway 2 report and approved in compliance with council's Contract Standing Orders.

## **Community impact statement**

36. People in all areas of the borough are affected by the quality of the public highway and its assets.
37. All construction works will be completed to the specification and quality required by the council and will generate benefits for all sections of the community, including those who have a protected characteristic as defined in the Equality Act 2010.

## **Social Value considerations**

38. 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 framework contractors must comply with the requirements of the Social Value Act as required by the framework agreement.

## **Economic considerations**

39. As the council explores ways it can continue to deliver value for money, it is essential that it makes even better use of its resources to meet the needs of residents and businesses in the borough. Entering into access agreements with the TfL framework contractors will help the council demonstrate it is keeping its options open to ensure best value delivery.

## **Social considerations**

40. Only providers who demonstrate compliance to the Southwark Council Fairer Future Procurement Framework will be invited to enter into a mini-competition for any work contract.
41. The TfL frameworks have specific requirements for Contractors (including their sub-contractors and suppliers where applicable) with regards to:
  - Compliance with London Living Wage
  - Diversity and Inclusion
  - Annual reports on female / BAME pay comparisons
  - Apprenticeships
  - Staff training and development
  - Responsible procurement
  - Job creation (social mobility)
  - Membership of Considerate Contractor Scheme.

## **Environmental/Sustainability considerations**

42. The new agreements and service provision will adhere to industry best practice on sustainability and all material arising from highways works will be recycled and re-used in the borough whenever possible.
43. The call off request forms will 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 the latest Euro standard engines on new fleet in this contract, and encourage more sustainable forms of transport where this is feasible.
45. The use of dust suppression techniques for all construction activities will be a contractual requirement. Road planers will be fitted with systems using computer controls to manage suppression whilst minimising water consumption.

## **Plans for the monitoring and management of the contracts**

46. The TfL framework works will be managed by officers from the Highways Division.
47. The framework agreement includes an appendix relating to performance management. A series of KPIs are split into three groups. These are being further developed by TfL during the framework mobilisation period. There are a series of consequences for contractors failing the KPIs ranging from increased reporting obligations to termination.
48. Where construction works have a duration in excess of a year the contractors appointed under the framework agreement will be asked to provide an annual report in line with the Contract Standing Orders.

## **Staffing/procurement implications**

49. Alongside the start of the new professional services contracts the highways design team will be enhanced by the transfer of some currently out-sourced staff into the council's employment under the TUPE regulations. This enhanced design team will have the capacity to carry out the additional administrative duties to compile call off request forms, carry out the call off process, evaluate the call off responses and award the works to the most beneficial contractor. With the proposed enhancement of the design team this workload will be manageable within the existing Highways structure.

## **Financial implications**

50. There are no financial implications arising from this report. There is no direct cost to the council to enter into access agreements with TfL and no

commitment for the council to award any works via the framework agreements. Call off requests will only be completed when scheme funding has been secured.

### **Legal implications**

51. Please see the concurrent report of the Director of Law and Democracy.

### **Consultation**

52. No formal consultation is required.

### **Other implications or issues**

53. There are no other implications or issues arising from this report.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance (EL20/042)**

54. This report requests that Cabinet approves council entering into agreements with Transport for London (TfL) for access to their Surface Transport Infrastructure Construction (STIC) framework agreement and to their Highways Maintenance and Projects framework agreement (HMPF) from 1 April 2021 for an initial duration of eight years.

55. The Strategic Director of Finance and Governance notes that there are no financial implications arising from this report at this stage.

56. The Strategic Director of Finance and Governance notes that staffing and any other running costs connected with these recommendations are to be contained within existing departmental budgets.

### **Head of Procurement**

57. This report seeks approval from Cabinet for the council to enter into an agreement with TfL for STIC services from 1 April 2021 for a period of eight years until 31 March 2029. Cabinet notes that signing the agreement does no commit the council to any financial implications.

58. Cabinet notes this report was tender by TfL under EU Public Procurement Regulations 2015 allowing local authority to join, this is also in line with the council's contract standing orders (CSO).

59. A comparison will be undertaken between the TfL and HMPR frameworks for any highways works to ensure council receives value for money and subject to a GW2 process.

60. Management and monitoring of this framework is detailed in paragraphs 46 to 48.

## Director of Law and Governance

61. This report seeks approval to enter into agreements with Transport for London for access to their Surface Transport Infrastructure Construction and Highways Maintenance and Projects frameworks, as summarised within paragraphs 3 and 4.
62. Those frameworks have been procured by TfL in compliance with the (EU) Public Contracts Regulations 2015.
63. The council is expressly entitled to procure highway works using the new frameworks and may do so after having entered into a formal access agreement for each framework at nil cost.
64. The terms of those access agreements and the conditions of contract which will govern any works orders that may be “called-off” the frameworks have been reviewed and are considered acceptable for the council’s purposes. However, at this stage there is no obligation on the council to commit expenditure and any decision to use either framework will be based upon the outcome of the assessment process explained in paragraphs 14 and 15.
65. The relevant TUPE implications are detailed in paragraph 31.

## BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
None		

## APPENDICES

No	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Catherine Rose, Cabinet Member for Leisure, Environment and Roads	
<b>Lead Officer</b>	Mick Lucas, Director of Environment	
<b>Report Author</b>	Jason White, Highways Consultant	
<b>Version</b>	Final	
<b>Dated</b>	19 January 2021	
<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>
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Governance	Yes	Yes
Director of Exchequer (For Housing contracts only)	N/a	N/a
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		21 January 2021