

Committee(s)	Dated:
Procurement Sub Committee – For Decision Finance Committee – For Decision Project Sub Committee – For Information Streets and Walkways Sub Committee – For Information	12 April 2021 13 April 2021 14 April 2021 29 April 2021
Subject: Highway Construction & Maintenance Term Contract Tender	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	1, 9, 10, 12
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain’s Department?	N/A
Report of: Director of Built Environment	For Information / For Decision
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Summary

The purpose of this report is to seek Member approval for the procurement strategy to be used in the selection of a new term contractor for highway construction & maintenance services.

The City's current highways term maintenance contractor is JB Riney who deliver highway maintenance, resurfacing, road marking, drainage, street lighting, public realm enhancements and highway changes for the Department of the Built Environment, as well as similar services for other departments.

Experience has shown that having a term contract in place has delivered several benefits. These include economies of scale, high quality work, early contractor involvement, quicker scheme delivery, lower staff costs, greater cost certainty, partnership working and more appropriate risk management.

The City’s term contract was last tendered in 2012 and consolidated a number of previous contracts, using economies of scale to deliver significant savings. As a result, returning to separate contracts for different aspects of the service is not recommended. Similarly, other procurement options such as taking the function back in house, using frameworks or employing the London Highway Alliance Contract (LoHAC) are not expected to deliver Best Value across a range of measures including cost, quality & performance, flexibility and early contractor involvement.

JB Riney are now 8½ years through their ten-year term (five years plus five-year extension), during which time they have maintained a very high level of performance. Nevertheless, the contract cannot be extended, and it is appropriate to test the market again to determine whether Riney are delivering best value. As such, officers of DBE, together with Procurement and Comptrollers, are intending to retender these services in time for the current contract to expire in June 2022.

Recommendation(s)

Members are recommended to approve the retendering of the term contract for highway construction & maintenance as set out in this report.

Main Report

Background

1. The City Corporation is the Highway Authority for all the public highway and City walkway areas in the Square Mile, except those streets that fall within the Transport for London Road Network.
2. As such, the Department of the Built Environment (DBE) is responsible for maintaining those streets, footpaths and walkways, including inspecting them for defects, undertaking repairs and resurfacing, maintaining signs, road markings, bollards, street nameplates & drainage. It also looks after powered & illuminated street furniture, such as road signs, fountains & streetlights, as well as all new highway construction activities, ranging from road safety & transportation schemes to public realm & security projects, including highway repairs & enhancements related to building developments.
3. DBE delivers all these functions using a term contract, with the current incumbents being JB Riney. They were awarded the contract in early 2012 following a standard EU procurement process, and over the 8½ years of the contract so far, Riney have often delivered over £10m of work each year. Most of that value relates to major public realm schemes & developments rather than standard highway maintenance operations, but also includes a smaller amount of work delivered for Open Spaces and the City Surveyors.
4. Despite the impact of COVID-19 which resulted in a shutdown of non-essential work during the last part of the contractual year (which ran to June 2020), the value of work delivered through the term contract remained around £10m for the year.
5. With the current term contract set to expire in June 2022, officers have confirmed with the Comptroller & City Solicitor that it cannot be extended beyond its five + five year duration, and the expectation in any case would be that after 10 years operation, it's appropriate to test the market to ensure the City is still receiving best value for these services.

Contract Focus

6. The direction and culture of the forthcoming contract needs to remain aligned to the City's requirements of delivering & maintaining high quality streets and public spaces. It also needs to consider the challenging funding environment for highway maintenance works that recently resulted in changes to the City's intervention thresholds for road and footway repairs.
7. The winning bidder will be required to demonstrate value for money, operate with a degree of flexibility that minimises the impact of their works on pedestrian and vehicular traffic and be able to introduce innovation to the way services are delivered through the use of recycled materials and identifying more sustainable approaches to maintaining the highway aligned with the Climate Action Strategy.
8. The City's term contract has been built on a partnership approach with a series of City-specific Key Performance Indicators and sample checks being used to monitor performance, and with the contractor only paid for the work they complete rather than tracking every deviation from the construction package which otherwise can result in the creation of a claims culture.
9. The difficulties of working in the City's compact street environment, often with prohibitive volumes of underground utility services, requires the winning bidder to be flexible and adaptable, making a prescriptive contractual approach unsuitable for the City's environment. To help manage this, Riney felt it appropriate to embed a resource at Guildhall dedicated to working with the City to improve and maintain communications with those affected by their works, and something similar may be proposed by tenderers this time.
10. Other successful aspects of the contract that will be sought to be retained include:
 - a percentage of the contract sum is put at risk in the event of underperformance against the contract KPIs
 - a mechanism is included to allow for early invoicing for standard monthly activities, allowing for a contract discount to be offered by the contractor
 - a percentage rebate is offered by the contractor back to the City based on turnover through the contract over the previous 12 months, available for reinvestment to promote innovation
 - high standards for ethical procurement, particularly the way in which materials are sourced through the supply chain.
11. In terms of new innovations, the contract will look to include:
 - any innovation or concept that will support or align with the objectives of the Climate Action Strategy, including engagement with the supply chain regarding sustainable new materials & products
 - a specification aligned with the City's approved technical manual SPD for the use of highway materials and concepts such as Sustainable Urban Drainage Systems

- a focus on managing the contractor's vehicle fleet, encouraging the use of electric vehicles, tools and plant
- the provision of lean technological processes that help the collection and management of data in a faster and more cost-effective way
- better use of technology to enhance Health & Safety and improve working practices in terms of near miss reporting, protection systems and live site updates to gangs
- reporting and active support for diversity within the company and the contract
- opportunities for apprentices in terms of their performance and development.

Current Position – Use of a Term Contract

12. There are several established benefits to using a term contract arrangement for Highway works.

Economies of Scale

13. Matters of highway maintenance and scheme delivery clearly overlap in terms of labour, plant & materials, and the combined volume of maintenance & project work through the term contract delivers economies of scale in terms of material rates and management skills.
14. Taking this approach in 2012 and combining three previously separate term contracts (highway maintenance, highway resurfacing and highway drainage) delivered efficiency savings of around 18% on revenue works and 22% on typical capital street scene works. As a result, it is thought uneconomic to unpick this approach and separate these contracts back out.

Quality of work

15. In addition to economies of scale, there is a risk to the City of using different contractors for different types of work. This is because of the City's difficult working environment, its use of high-quality materials that need particular expertise, and its desire for high quality finishes that better suit a regular, skilled and knowledgeable workforce.
16. Most of the construction gangs have worked in the City for many years, using TUPE to transfer across companies to remain here. As a result, they are used to working in the City's narrow streets with our difficult combination of traffic, cyclists, pedestrians, businesses, residents and visitors. They also have a proven track record of delivering high quality work with our specialist pallet of materials that has stood the test of time.
17. By comparison, other contractors can lack the experience of working in our challenging environment and gangs & supervisors can be unprepared for the City's local conditions.

Early contractor involvement

18. The City is sufficiently skilled in the process of delivering complex highway schemes that we develop the final design for the eventual scheme in parallel

to how the scheme will be built. This allows the range of construction costs to be narrowed during the design process, with contingencies reduced and potential savings identified.

19. Key to this is the need for early contractor involvement, meaning the decision over the choice of contractor must be made early in the project. Having a term contractor actively involved early in the design and construction planning process allows them to advise on maintainability and buildability issues in the certainty that they will both be undertaking the work as well as maintain it going forward. Without a term contract in place, this would not be possible, and these benefits would be unrealised.

The risk of claims

20. Under a separate tendering arrangement for each major project, there would also be a much greater risk of claims as tenderers will be more likely to lack an adequate appreciation of how difficult a place the City is to work because of its narrow streets, high traffic and pedestrian density, high quality requirements and major subsurface utility infrastructure.
21. As a result, they are much more likely to request compensation events than under the City's current term contract arrangement, where such claims are virtually nil as the contractor is able to redeploy staff to other City work in the event of delays caused by unforeseen issues.

Options - Alternatives to a term contract

22. The benefits set out above typically underpin the choice of a term contract over other ways of procuring these services and is the way most highway authorities manage these functions. There are alternatives (set out below), but none have proved sufficiently viable in the past for the City to utilise them for this type of work.

In-house provision of services

23. It is some time since the City delivered these services through an in-house direct labour structure, and currently there are no plans to propose such a move. Using experienced construction companies is still seen as the most efficient way to deliver these works across the sector as they typically have wider resources to draw upon, they are in a better position to manage supply chain risks and they can use accumulated volumes across different contracts to negotiate enhanced rates in labour, plant and materials.

Retendering each major scheme

24. There is an argument that retendering individual major schemes would allow market forces to deliver the cheapest rates for each job. However, there are several key problems with this approach. In particular, tendering major works on an individual basis would cause significant delays to each project due to the timescale involved in such a process.
25. A tender would usually only be run once the construction package is finalised, at which point the scheme delivery process would have to stop for this to happen. Given the value of some schemes, having to tender at this point could then add over a year to the construction timetable as OJEU tendering

regulations would apply and add considerably to staff costs. Early contractor involvement would also not be possible in order to maintain a level playing field between tendering companies.

26. By having a term contract in place, the City does not have to wait for the scheme construction package to be finalised and the design process halted while the work package is tendered. Instead, costs are established through a dynamic assessment process during the design stage.

Operating a series of framework contracts

27. A framework contract with a number of suppliers to call off could address some of these mid design tendering delays but disconnecting the major works contract from the highway maintenance contract risks introducing conflicts between contractors in terms of design and downstream maintainability.
28. In addition, the current joined up approach allows the contractor to move resources between schemes & maintenance works, allowing it to manage resources without incurring claims by responding to on-site delays, moving gangs between works to keep them productive. Having different contractors delivering different aspects of the same service puts this flexibility at risk.

The London Highways Alliance Contract (LoHAC)

29. TfL recently completed a retender for their highway services which is open for other highway authorities in London to join. The City can choose to join the London Highways Alliance Contract (LoHAC) but previous benchmarking of the respective contract costs had previously shown the City's term contract was demonstrably cheaper. However, more fundamentally, differences in the two forms of contract suggest LoHAC would cost more for the City to administer & it would introduce a significant risk of claims that are virtually absent from the City's term contract.
30. On this basis, Members previously agreed to remain with the City's term contract approach when Riney's 5 year contract extension was approved, and despite the recent retender by TfL, the view of officers remains the same. Any potential economies of scale are outweighed by a likely lack of priority from the contractor when part of such a wide-ranging contract, as well as the risk of higher management costs and the introduction of a claims culture. As such, using LoHAC is not recommended, albeit there could still be opportunities to remain involved for benchmarking and contingency planning purposes.

Proposal

31. In summary, the justification for continuing to use a term contract for these functions includes:
 - It allows the provision of flexible, joined-up services, having one contractor to build, inspect and maintain all aspects of the highway;
 - It allows resources to be swapped seamlessly between highway maintenance and major schemes, minimising the risk of claims for downtime whilst ensuring maximum flexibility of resource

- It delivers economies of scale in terms of management resource, material procurement and workforce;
 - It facilitates a corporate resource available to other departments to deliver work of a similar nature;
 - It removes the delay and cost to individual projects of tendering these services each time, creating a 'fast track' to facilitate early contractor involvement, both in terms of time and expertise;
 - It minimises the impact of these works on the public by ensuring that gangs, supervisors and managers all understand the requirements necessary to work in the Square Mile.
32. As a result, it is proposed to proceed with a combined tender for a term contract for these works and services based on the Timeline set out in Appendix 1.

Strategic Implications

33. Having an effective, high quality term contract for highways construction & maintenance is essential to delivering key aspects of the City's Corporate plan, in particular:
- Our spaces are secure, resilient & well maintained to high standards
 - Creating & transforming streets & public spaces for people to admire & enjoy
 - Improving the experience of arriving in & moving through our spaces
 - Protecting users of streets & public spaces
34. The Procurement Category Board has confirmed it is supportive of the proposed procurement approach to deliver Best Value for highway works (see Appendix 2), with the contract designed to be available for use by other departments.

Financial implications

35. In 2012, the estimated annual value attributed to the contract was £10m per annum. The value of works delivered through the contract has since varied from £4m (during the Olympic shutdown in 2012) to almost £17m per 12 month period, with the annual amount depending on the volume of work around new developments, public realm schemes (such as Holborn Circus, the recent Street Lighting LED upgrade & Crossrail) and general highway maintenance operations..
36. The following table helps to show the spend profile over the eight full contract years so far (1st July to 30th June). A similar level of turnover is expected for the new contract, but to be clear, no guarantee of turnover is included in the contract and the City is not required to underwrite a specific volume or value of work.

2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
£3.7m	£9.3m	£11.2m	£10.8m	£10.6m	£13.4m	£16.98m	£10.2m

Resource implications

37. By allowing the term contractor to deliver a joined-up service managed through Key Performance Indicators, the City staff resources required to manage the contract are relatively limited and have been able to function without the need for quantity surveyors. Changing the currently contractual approach would likely require additional DBE staff resources to manage this process.

Legal & Risk implications

38. As noted above, the term contract will reach the full extent of its available term in June 2022 and cannot be extended with the risk of challenge. Therefore, a retender for these services is required.

Equalities Implications

39. Active engagement and management of diversity within the company and the contract will be of the highest importance, whilst clear and concise data capture on how this is being achieved will be mandatory.

Climate Implications

40. All changes and new innovations within the proposed contract will seek to improve our approach towards the climate change emergency through delivering new initiatives and innovations with successful and measurable outcomes.

Security Implications

41. None

Conclusion

42. The term contract partnership approach has a proven track record (20 years+) in delivering high quality outcomes for the City & its stakeholders and remains the preferred solution for delivering these functions.

Appendices

- Appendix 1 - Contract award & mobilisation timetable
- Appendix 2 – Procurement Category Board (PT4) Report

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