

<b>Committee(s):</b>	<b>Date(s):</b>
Planning & Transportation Committee	26 November 2013
<b>Subject:</b> London Highways Alliance Contract for Highway Works	<b>Public</b>
<b>Report of:</b> Director of the Built Environment	<b>For Decision</b>
<p style="text-align: center;"><b>Summary</b></p> <p>The City delivers its highway maintenance and major highway scheme project work through a term contract, currently with JB Riney &amp; Co Ltd. This was tendered in 2012 under the PP2P programme, and at that time it delivered significant savings over the previous term contract.</p> <p>TfL has recently completed a similar retender, but this time in the form of a framework contract (the London Highways Alliance Contract (LoHAC)) that would allow other Highway Authorities in London to procure works through it.</p> <p>Initial benchmarking of the respective costs of the contract would suggest the City's term contract rates are cheaper than LoHAC. There are also differences in the two forms of contract that would mean LoHAC could cost more to administer, and it introduces a significant risk of claims that are virtually absent from the City's term contract.</p> <p>However, there are still benefits to the City joining LoHAC in terms of open book benchmarking, contract resilience, contingency planning, the exchange of information and the availability of wider highway-related services such as design and consultancy. Also, TfL have confirmed there is no obligation to place works through LoHAC, so the commitment of joining is relatively risk free.</p> <p><b>Recommendation(s)</b></p> <p>Members are recommended to authorise the City to join the London Highways Alliance Contract for highway works.</p>	

### **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 (the TLRN, or 'Red Routes').
2. As such, the City is responsible for maintaining those streets, footpaths and walkways, including inspecting them for defects, undertaking repairs and

resurfacing, changing or enhancing streets through major projects, maintaining signs, bollards, street nameplates and drainage, and looking after all the powered & illuminated street furniture in the City, from road signs to street lights.

3. The City delivers these functions through the use of a term contract, with the current incumbents being JB Riney & Co Ltd. They were awarded the contract in early 2012 following a standard EU procurement process and PP2P assessment, with typically £4m to £8m of works delivered each year, depending on the volume of externally funded streetscene enhancement and transportation projects.
4. TfL undertakes these same functions on the TLRN, and up until April 2013, they operated with a similar term contract arrangement. However, three years ago TfL decided to look at developing a wider framework contract that not only would deliver their works on the TLRN and on traffic signals throughout London, but also would be available for other Highway Authorities to use. This London Highways Alliance Contract (LoHAC) was intended to help in developing a common specification for highway works, to save Highway Authorities the time and cost of tendering their own contracts, and to generate savings through economies of scale by aggregating work volumes.
5. Prior to the City's term contract award in 2012, Members were informed that the LoHAC process was not sufficiently advanced at that stage to allow the City to compare both contracts in terms of value, delivery or management style. However, the LoHAC contract has now commenced, and the results of the initial comparison between the contracts, and the issues and benefits of joining LoHAC, can now be reported to Members.

### **Current Position**

6. LoHAC has divided London into four regional areas, with a different contractor or consortium working in each. The City Corporation is one of eleven Highway Authorities within the Central area, which was won by CVU, a consortium of Colas Ltd, Volker Highways Ltd, and URS Infrastructure & Environment UK Ltd. Of those eleven authorities, LB Islington and LB Lambeth are already using LoHAC to deliver works, with three others expected to follow soon (although others such as Westminster have indicated they will continue with their own arrangements).
7. TfL are already delivering works in the City under the LoHAC umbrella, such as the resurfacing of Bishopsgate earlier in the year and the recent upgrading of the traffic signals at Bank junction, and they are now promoting it to other Highway Authorities, including the City Corporation.
8. Across London, so far eight authorities have signed up to LoHAC, with a further six part way through the process, although at this stage it is unclear how many of these are transferring their entire highway maintenance requirements, and how many will be maintaining their existing contracts in order to benchmark and compare the two set-ups.
9. It is important to note that signing up to LoHAC does not place the City under any obligation to place works through it, and although TfL did initially imply

that Highway Authorities would be required to use LoHAC as a condition of receiving TfL funding for major projects and schemes, TfL have since clarified their position to say that they do not intend to force LoHAC upon Highway Authorities. Instead, they say that LoHAC should be used as a benchmark for best value between different forms of contract, and with that in mind, the key points of comparison between the City's term contract with JB Riney, and the LoHAC contract with CVU, would appear to be:

- a. Benchmarking
- b. Contractual differences
- c. Experience

#### Benchmarking

10. Earlier this year, the City and TfL agreed to undertake an exercise to establish the relative cost and value delivered under each contract, with the intention of setting an initial benchmark to save the City from re-pricing individual schemes through both contracts every time.
11. This exercise compared rates for a typical set of resurfacing works as well as a major scheme, and the results showed the City's rates were approximately 6.3% cheaper for resurfacing and 11.5% cheaper for the scheme example. It would appear that although LoHAC has indeed delivered savings on rates, so too did the City's recent tender, leaving the City currently at a competitive advantage in the overall cost of delivering works.
12. TfL accepted this assessment, and the City indicated it would therefore continue to use Riney in the medium term. However, given the size and importance of the imminent Aldgate project, it was felt appropriate that LoHAC should also be given an opportunity to provide a cost estimate for that specific scheme. However, CVU declined to offer a cost as they felt they could not supply a robust and realistic price, and that at this stage anything they provided might not be representative of what it would actually cost to deliver under LoHAC. This is principally because of differences in the style of contract between LoHAC and the City's term contract (see below), but as a result, the Aldgate project will be proceeding under the City's term contract.
13. Nevertheless, Riney's individual item rates (as with most contracts) are commercially sensitive, meaning they cannot be easily and openly shared. Equally it is difficult for the City to obtain rates from other highway authorities for their works, meaning that open benchmarking has typically been a difficult process. However, the benefit of LoHAC is its full open book nature, meaning that rates are openly available to compare and benchmark for all members, with the caveat that care must always be taken to ensure that any assessment is made on a like-for-like basis.

#### Contractual differences

14. An analysis was conducted to consider which particular rates underpinned the differences in overall price, but a line by line review was difficult because the specifications were not easily comparable. For example, the cost of traffic management and site accommodation is implicitly included within the individual City rates, whereas LoHAC has separate explicit rates for these items.

15. In addition, a number of standard items and materials that the City requires for works in the Square Mile (such as granite setts) were not included in the LoHAC schedule of rates and so could not be costed by CVU. The absence of these items represents an additional project risk were LoHAC to be used, both in terms of fixing costs and in establishing CVU's expertise in delivering these items, so that they currently prevent a final benchmarking exercise from being undertaken.
16. More fundamentally, LoHAC uses a standard highway industry set of contract documents, called the 'New Engineering Contract', or NEC. One of the key differences between NEC and the City's bespoke partnership style contract is that NEC is driven by fixing a construction package, from which the contractor can claim compensation events (ie additional fees) for changes to the package that are not of their making. These might include changes in design to adapt to local circumstances, changes in traffic management requirements, or delays in programme not foreseen at the start.
17. As a result, NEC has in the past required a high level of contract supervision, with both sides employing quantity surveyors to keep track of volumes, programme and claims, and there has been a considerable risk that claims at the end of the project can significantly distort the eventual project cost. As a result, considerable project contingency values sometimes need to be held in reserve to meet such claims.
18. With the difficulties of working in the City's compact street environment, with often prohibitive volumes of underground utility services, and a need to adapt work compounds and programmes to minimise disruption to local stakeholders, having such a prescriptive approach has previously not been thought suitable for the City's environment.
19. Instead, the City's term contract is built on partnership with Riney, who are managed by a series of contract Key Performance Indicators. Their work is sample checked, and they are only paid for the work they complete, rather than having to track, assess and claim every deviation from the construction package. This typically results in lower management costs than NEC (the City do not employ highway quantity surveyors), virtually no claims and therefore more certainty regarding final cost.

#### Experience of working in the City

20. In addition to financial comparisons, there is a risk to the City of using CVU in terms of the quality of work. The value of using JB Riney is that the majority of their 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. Historically they have also delivered high quality work that has stood the test of time.
21. By comparison, CVU as a consortium are only just beginning to work in the City (of the three, only Colas has had experience in the Square Mile before), and the recent traffic signal upgrade works delivered at Bank junction for TfL would suggest that CVU have a steep learning curve ahead of them.

#### Issues and Benefits of Joining LoHAC

22. In addition to the above, there are other specific issues and benefits of joining LoHAC. These typically involve:
  - a. Early contractor involvement
  - b. Rectification of poor quality workmanship
  - c. Contingency planning and contract resilience
  - d. Other services

#### Early contractor involvement and scheme programmes

23. 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. Key to this is the need for early contractor involvement, meaning the decision over the choice of contractor has to be made early on in the project.
24. The benefits of having a term contractor mean that the City does not have to wait for the scheme construction package to be finalised before asking different contractors to tender based on how they might separately construct it. Given the value of some schemes, this could add over a year to the construction timetable as EU tendering regulations would have to apply.
25. Having established their best value position by winning the recent tender, Riney can fully commit to being involved in the design and construction planning process, advising on maintainability and build-ability issues in the certainty that they will be undertaking the eventual work.
26. If that is no-longer the case, then they would have to be excluded to keep a level playing field, otherwise other contractors would be tied to pricing a scheme implicitly based on a set of Riney assumptions and with Riney having 'inside' knowledge. Again this would delay the process of delivering the scheme, and there would also be much greater uncertainty of costs to the project, both to officers and to Members through the Gateway reporting process.
27. As a result, if the City were to join LoHAC, the choice between Riney and CVU must be made early on in a project, but given this will be typically well before the construction package is finalised, a direct price comparison will be difficult given LoHAC's NEC-style format. To reiterate, this is why establishing relative benchmarks for different types of works must be done beforehand, rather than on a scheme by scheme basis.

#### Rectification of poor quality workmanship

28. If the City were to join LoHAC, the City will have to establish the contractual consequences of any poor performance in CVU's quality of work. Under the City's term contract, JB Riney are obliged to rectify any failures in the quality of workmanship, and the on-going contractual relationship means that there is no requirement for penalty clauses or bonds.
29. If the City's procurement through LoHAC is more intermittent, a more formal liability clause will have to be agreed. These sorts of issues can be explored

in more detail with TfL, CVU and other LoHAC partners in due course, but would have to be agreed before offering CVU works.

#### Contingency planning and contract resilience

30. Although the City has sought to draw together all of its current highway-related works under one contract to deliver a joined up service and maximise economies of scale, there are clear benefits to holding a contractor in reserve for matters of contingency planning and contract resilience.
31. Should the City need to urgently call upon highway (or indeed cleansing) resources to deal with an emergency situation, having the ability to draw from more than one resource from different parts of London would be invaluable. In addition, should Riney not be able to deliver on its contract with the City for any reason, or should the volume of work exceed their capacity, having a fall back contractor secured would be beneficial.

#### Other services

32. There are other specialised services under the LoHAC umbrella that go beyond the standard nature of highway works. These include highway design work, consultancy services and asset capture, and it is highly likely that benchmarking in these areas between Riney and LoHAC would deliver savings for projects, as well as for one-off items of work.
33. In addition, one of the benefits of drawing together authorities under the umbrella of LoHAC is the sharing of technical expertise between the contractors and authorities who have signed up. There is already a concerted effort to share case studies, experience and technical specifications between the LoHAC partners, and this could open up new more efficient ways of working that might otherwise be closed to the City.

### **Options**

#### Do nothing

34. With TfL confirming the City is not obliged to deliver TfL-funded works through LoHAC, there is no requirement for the City to sign up, and Riney can currently deliver the City's highway needs at rates recently assessed as best value through a competitive open tender and subsequently benchmarked with LoHAC itself.
35. However, the benefits of signing up in terms of the ability to openly benchmark on an on-going basis, to have a contractor for contract resilience and contingency planning purposes, and to look at other services away from highway works, would be lost.

#### Sign up to LoHAC

36. As there is no obligation to put work through LoHAC, signing up would allow the City to take advantage of the benefits listed above with little risk.
37. However, when it comes to actually placing works through LoHAC, this would involve some inherent risks that have been previously managed out of the City's current term contract with Riney, and they would have to be specifically

addressed before the City would want to procure using LoHAC for major schemes and works.

## **Proposals**

38. It is proposed that the City Corporation signs up to LoHAC subject to the completion of a full and thorough assessment of the contract documents and procurement processes by the Comptroller & City Solicitor and City of London Procurement Service respectively.
39. Given the benchmarking exercises so far undertaken, it is also proposed that the City will continue to use Riney to deliver its major streetscene enhancement and transportation projects, its resurfacing programme and highway maintenance works in the medium term. For individual schemes, this will be reported to Members through the standard Gateway reporting mechanism and Project Vision.
40. In the meantime, the City will continue to seek a way of benchmarking the respective contracts in a like-for-like fashion that allows officers to consider the issues beyond individual rates, such as:
  - a. the risk profile of the respective contracts, including LoHAC's vulnerability to claims;
  - b. the potential for additional management costs that LoHAC might require, over and above the City's current term contract management arrangements;
  - c. working with CVU to set rates for items that don't currently appear within the LoHAC specification.
41. Once these assessments are made, officers will look to select (and recommend to Members) a specific scheme to fully test the LoHAC contract model, including:
  - a. the quality of the early contractor involvement;
  - b. the style of contract (including any additional City management requirements and costs);
  - c. the final delivery cost compared to the initial CVU estimate and the equivalent Riney term contract estimate;
  - d. the issues of claims and contingencies;
  - e. the quality of the works themselves.
42. Such a test project will also require the up-skilling of some DBE staff as experience in managing works using NEC is not currently required for officers managing Riney.

## **Corporate & Strategic Implications**

43. The Comptroller and City Solicitor has confirmed the City is entitled under the OJEU Contract Notice to access the Framework for the LoHAC Central Area. He has also confirmed that a due diligence exercise can and will be

undertaken in relation to externally procured framework contracts such as these, and any implications as a result of TUPE regulations will also be considered.

44. The CLPS in turn has confirmed it is supportive of such a collaborative approach to procurement in order to deliver Best Value in highway works and services.

## **Implications**

45. As noted above, the LoHAC contract is a call-off contract, so that the City is under no obligation to place works through it. Rather, the contract can be used as / when the client (ie the City) desires. Also, to be clear, the contractual relationship would be between the City and CVU, rather than through TfL.
46. Regarding the City's contractual obligations to Riney, there is no exclusivity in their contract, meaning that the City would be able to place works with other companies should it so wish. However, doing this on a large scale would risk calling into question the long-term viability of the term contract, as the rates offered by Riney would be based on a typical expectation of work volume, and a significant reduction in that volume would likely affect the profitability of the contract to Riney.
47. In addition, Riney have embedded a certain amount of staffing resource in the City to deliver the current contract, manage major projects and achieve a high focus on customer care. This includes a dedicated communications officer, and should the volume of work made available to them reduce sufficiently, then they would inevitably have to reconsider this commitment, which would have a knock-on effect on the quality of delivery for their remaining works.

## **Conclusion**

48. Signing up to LoHAC would enable the City to continue to benchmark its highway services, whilst taking advantage of the wider contractual benefits that LoHAC would appear to offer. However, current benchmarking would strongly suggest that the City's term contract still offers best value to the City, and will continue to be the primary route for delivering highway works for the City in the medium term.

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