

## CABINET

21 September 2021

### HIGHWAYS TERM MAINTENANCE CONTRACT EXTENSION

#### Report of the Strategic Director for Places

Strategic Aim:	Delivering sustainable development	
Key Decision: Yes	Forward Plan Reference: FP/090721	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mrs L Stephenson, Deputy Leader and Portfolio Holder for Communities, Environment and Climate Change	
Contact Officer(s):	Penny Sharp, Strategic Director for Places	01572 758160 psharp@rutland.gov.uk
	Andrew Tatt, Interim Principal Highways Manager	atatt@rutland.gov.uk
Ward Councillors	All	

#### DECISION RECOMMENDATIONS

That Cabinet:

1. Recommends to Council to approve the extension of the current Highways Term Maintenance Contract Upon reliance of Regulation 72 (1)(b) of the Public Contract Regulations 2015, by an additional six (6) months from 1st December 2023 until 31st May 2024, to ensure service continuity during the commissioning period of the new RCC Highways Term Maintenance Contract.

#### 1 PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to seek approval for the extension of the current Highways Term Maintenance Contract Upon reliance of Regulation 72 (1)(b) of the Public Contract Regulations 2015, to vary the Contract by an additional six (6) months from 1<sup>st</sup> December 2023 until 31<sup>st</sup> May 2024. This is to ensure service continuity during the commissioning period of the new RCC Highways Term Maintenance Contract. It has been identified as high risk to change contracts during the Winter Service (gritting provision) period. The contract extension will enable the mobilisation of a new contract after winter service.

#### 2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 The Council entered into a contractual agreement with "Tarmac" dated 1st

December 2013 (the “Contract”) in relation to the provision of Highway Term Maintenance on the terms of the Contract.

The scope of the Highway Maintenance Contract includes the following activities:

- Construction
- Highway’s maintenance including maintenance work for bridges
- Traffic control, street lighting and street furniture provision and maintenance
- Gully cleansing and emptying
- Drainage works
- Winter maintenance services, including provision of vehicles.

2.2 The Contract was subsequently extended by:

- A letter of Extension dated 18th January 2018 (until the 1st December 2020)
- A letter of Extension dated 16th November 2018 (until the 1st December 2021)
- A Deed of Extension dated 13th November 2019 (until the 1st December 2022)
- A Deed of Extension dated 18th December 2020 (until the 1st December 2023) (hereinafter referred to as the “Contract”).

2.3 The full extension provision within the original Contract has now been utilised which takes the end date to 30th November 2023. Any additional extension beyond this point will need to be upon reliance of Regulation 72 (1)(b) of the Public Contract Regulations 2015, as a contract variation.

### **3 CRITERIA FOR EXTENDING THE CONTRACT PERIOD FURTHER**

3.1 There is clear justification for the further six (6) months extension to 31st May 2024, in accordance with Regulation 72(1)(b) PCR 2015 for the following reasons:

- a) For additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement.
- b) Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
- c) Would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.

The reason for seeking this further extension is to avoid the current contract terminating part way through the winter season. This would cause significant inconvenience for the contractor to resource part of a winter period as well as to any new contractor to start part way through this period. The contractors may struggle to resource half a winter period with the appropriate equipment and trained operatives required. This would adversely affect the service for that winter period and may reduce the appeal for any new bidders of a contract which starts and finishes at this time of year.

### **4 HIGHWAYS MAINTENANCE CONTRACT PERFORMANCE**

4.1 The cumulative value of work set out in the OJEU Notice, dated 4 December 2012, was set in a range between £25 million and £40 million. The value of work that has

already been awarded through the contract together with what would be awarded between 30 November 2023 and 31st May 2024 is highly unlikely to exceed the maximum procured value. This criteria for the Contract extension has therefore been met.

- 4.2 A set of 12 Key Performance Indicators (KPIs) were set out in the Highway Maintenance Contract. These KPIs are standard MHA Contract KPIs and considered appropriate to monitor the performance of the service provider, they can also be benchmarked with other MHA contracts if appropriate.
- 4.3 The Contract KPI outputs for each Financial Year since the commencement of the contract have been presented to the annual Network Board (consisting of officers of the Council and representatives of Tarmac) meeting for review.
- 4.4 The highway maintenance contract still meets Rutland County Council's requirements for effective highway maintenance delivery in accordance with the terms of the contract. This criteria for the Contract extension has therefore been met.
- 4.5 All the criteria required under the Contract for there to be an extension have been satisfied and there is no contractual reason why the Contract cannot be extended to 31st May 2024.

## **5 CONSULTATION**

- 5.1 There is no need for any further consultation associated with the request for an extension to the Highway Maintenance Contract.

## **6 ALTERNATIVE OPTIONS**

- 6.1 This paper is to approve a further six (6) months contract extension to Tarmac who have achieved all the criteria for the extension.
- 6.2 The alternative option would be to not to extend and procure from the current end date which has been assessed as high risk for the reasons set out in Section 3.

## **7 FINANCIAL IMPLICATIONS**

- 7.1 The proposed additional six (6) months of the contract will be subject to the Contract's standard price fluctuation clause.
- 7.2 The extension will be on the current contracted rates with six (6) months through put of c£1.75m.

## **8 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 8.1 The Highway Term Maintenance Contract has provision for the Contract to be extended but these extensions have been fully utilised.
- 8.2 Therefore, to extend the current Highways Term Maintenance Contract beyond the period provided for in the contract, the Council would need to rely upon Regulation 72 (1)(b) of the Public Contract Regulations 2015, the Council wishes to vary the Contract by an additional six (6) months from 1st December 2023 until 31st May 2024, to ensure service continuity during the commissioning period of the new

## RCC Highways Term Maintenance Contract.

8.3 There is clear justification for the further six (6) months extension to 31st May 2024, in accordance with 72(1)(b) CPR 2015 for the following reasons:

a) For additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement.

b) Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or

c) Would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.

The reason for seeking this further extension is to avoid the current contract terminating part way through the winter season. This would cause significant inconvenience for the contractor to resource part of a winter period as well as to any new contractor to start. The contractors may struggle to resource half a winter period with the appropriate equipment and trained operatives required. This would adversely affect the service for that winter period and may reduce the appeal for any new bidders in a contract which starts and finishes at this time of year.

8.4 The criteria for extending the end of the contract period as set out in the Contract have been assessed and found to be fully compliant.

8.5 There is therefore no reason why the extension cannot be allowed.

## **9 DATA PROTECTION IMPLICATIONS**

9.1 A Data Protection Impact Assessments (DPIA) has not been completed for the following reasons: because there are no risks/issues to the rights and freedoms of natural persons.

## **10 EQUALITY IMPACT ASSESSMENT**

10.1 No Equality Impact Assessment has been undertaken because this is for an extension for an existing contract and there are no proposed changes to the operation of the contract.

## **11 COMMUNITY SAFETY IMPLICATIONS**

11.1 There are no community safety implications on the awarding an extension to the existing contract.

## **12 HEALTH AND WELLBEING IMPLICATIONS**

12.1 There are no changed health and wellbeing implications on the awarding an extension to the existing contract.

## **13 ORGANISATIONAL IMPLICATIONS**

13.1 Environmental implications

13.2 To explore and implement the use of materials where practicable, which optimise the carbon reduction measures and their usage, while ensuring a functional and cost effective balance is maintained. Implementing environmental best practice where practicable throughout the contract.

#### **14 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

14.1 The criteria set out in the Highway Term Maintenance Contract based upon the Contactor performance for 2020/21 have been fully satisfied. It is therefore recommended that the Highways Term Maintenance Contract upon reliance of Regulation 72 (1)(b) of the Public Contract Regulations 2015, the Council shall vary the Contract by a further six (6) months from 1st December 2023 to the 31st May 2024.

#### **15 BACKGROUND PAPERS**

15.1 There are no additional background papers to the report.

#### **16 APPENDICES**

16.1 There are no additional appendices to the report.

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