

**Wiltshire Council**

**Cabinet**

**25 September 2018**

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**Subject: New Highways Term Consultancy Contract**

**Cabinet Member: Councillor Bridget Wayman (Cabinet Member for Highways, Transport and Waste)**

**Key Decision: Yes**

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### **Executive Summary**

On 30 November 2019 the current highway consultancy contract comes to an end. The contract provides support for the provision of essential highway services as well as specialist assistance in the preparation of reports, studies and bids for central government funding. The current contract is the third consecutive consultancy contract that has been awarded since 1999. The average annual spend is £5 million, and this is likely to remain similar for a new consultancy contract.

The success of these previous contracts has enabled the highway teams to continue providing essential highway services in accordance with statutory and legal requirements, and the Council's Business Plan. Without the support provided by a suitable consultancy the authority would struggle to provide these services. The contract will also enable the Authority to achieve environmental improvements, especially in terms of reduced carbon footprint and recycling of materials in connection with the Works Contracts.

Options considered when the current contract ends:

- (i) Insourcing the work force.
- (ii) Setting up a framework agreement to provide the services on demand.
- (iii) Breaking the services down into smaller specific works packages that can be tendered separately.
- (iv) Procuring a new term consultant along similar lines of the current contract.

Option (iv) - To procure a new term consultant along similar lines of the current contract will best enable continuous provision and support to the highway services, and help meet priorities within the Council's Business Plan. It will also offer the best value for money with manageable risks.

TUPE rules will apply to staff employed by the current consultant. History has shown us that TUPE allows the transfer of key staff to the new consultant which has provided continuity with consultancy staff working on Wiltshire's behalf.

## **Proposals**

It is recommended that:

- (i) Tenders be invited for a single supplier to provide Wiltshire's Consultancy Services from 1 December 2019.
- (ii) The contract is to be tendered in accordance with the Council's procurement procedures, the duration will be for five years with the option to allow the service manager to extend the contract for up to two more years subject to performance.

## **Reason for Proposals**

There is a need for specialist advice and support in connection with roads, bridges and related services, and this would be most economically provided by a Highways Consultancy Contract.

**Alistair Cunningham**  
**Corporate Director**

## Wiltshire Council

### Cabinet

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**Key Decision: Yes**

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### Purpose of Report

1. To seek Cabinet approval for the invite of tenders for a single supplier to provide Wiltshire's Consultancy services when the current Consultancy Contract comes to an end on 30 November 2019.

### Relevance to the Council's Business Plan

2. Procurement of a new Highways Consultant will help meet the priorities of the Council's Business Plan 2017 – 2018, including:
  - Growing the Economy:
    - High Skilled Jobs (Employment)
      - Ensuring the Consultant establishes a local office will provide additional employment opportunities, including apprenticeships.
      - Promoting and informing school children of the career opportunities in, and associated with Engineering.
    - Transport and Infrastructure (Access)
      - By providing assistance to the highways teams in bidding and managing the successful delivery of highway schemes for improved road infrastructure and strategic roads and rail services.
  - Strong Communities:
    - Safe Communities (Protection)
      - The use of the latest design and specification considerations for road improvements will further improve safety, reducing casualties and the risk of flooding to properties.
  - Working with Our Partners:
    - Community Involvement
      - Ensuring consultation with local communities ahead of the design.
    - Performance
      - Through the delivery of successful schemes to program.
    - Change
      - Continuous reviewing performance and results and taking forward lessons learned on schemes will ensure an improved experience for the customer and staff.

- Delivering Together
  - By ensuring the Consultant acts as our partner when following the Council's values in promoting a shared vision for all public services and providing the best outcomes for our communities.

## **Background**

3. The Council is the local highway authority and is responsible for a highway network of over 4,400 kilometres with assets including almost 1,000 highway bridges, approximately 50,000 street lighting columns, illuminated signs and bollards, and almost 200 sets of permanent traffic signals. The management, maintenance and improvement of this infrastructure require a high level of technical expertise to meet the legal, technical designs and financial challenges they present.
4. In view of falling funding levels in the 1990s the decision was taken to outsource the Highway Operations and Consultancy Services, by the then Wiltshire County Council. In June 1999 a single contract, encompassing both highway consultancy and works, was awarded as a joint arrangement to Ringway and Parkman, who operated under the name of Ringway Parkman. The contract was for five years, with the possibility of a two year extension until May 2006 awarded on performance.
5. At the end of that contract period the decision was made to re-procure contracts, but with separate Consultancy and works contracts. Originally, it had been envisaged that through the joint contract the Council would achieve cost reductions through economies of scale, and in particular through reduced supervision costs. In reality, this resulted in some conflicts over what each party believed the other should be doing, sometimes resulting in a poor product and quality of work. It was decided that in the next contract the design and works functions should be split to provide greater transparency of the operations with clear boundaries between each party and their roles. Separating the contracts enabled independence, resulting in better quality, a better product and a more efficient management and delivery of the services.
6. The Highways Consultancy Contract was awarded to Mouchel (formerly Parkman) for a five year period, with a possible two year extension awarded on performance until November 2012. At the end of that contract a further Highways Consultancy Contract was tendered, which was awarded to Atkins on 1 December 2012. This was also for five years with a two year extension awarded on performance. This current contract will terminate on 30 November 2019.
7. Each contract has involved the transfer of staff in accordance with TUPE regulations. A number of staff have transferred to each contract, and have remained on the Wiltshire contracts since 1999. It is likely that 51 employees would be eligible for TUPE transfer at the end of the current consultancy contract; however, this number could change subject to the services to be delivered.

8. The current Highways Consultancy Contract delivers a range of mainly highways services, including:
  - Management of key highway services including:
    - Surfacing schemes
    - Street lighting services
    - Traffic signals services
    - Drainage investigations
  - Design and supervision of highway works including:
    - Structures
    - Highway improvement schemes
  - Technical checks of third party highway designs
  - Site investigations
  - Site surveys
  - Travel surveys
  - Major scheme assessments
  - Detailed designs
  - Delivery of designs and tender documents
  - Safety audits
  - Case studies
  - Transport funding bids
9. The current contract has enabled specialist designs, studies and investigations to be undertaken through the contract which previously would have had to be tendered separately. This has resulted in a more responsive service, delivering economies and a better level of support and understanding from the consultants. The current consultancy staff have built up good local knowledge and understanding of Wiltshire's highways, which has resulted in additional successful bids for funding.

### **Main Considerations for the Council**

10. The services provided under the current Highway Consultancy Contract will continue to be required when the contract ends in November 2019 as the full range of necessary skills is not currently available in-house.
11. The appointment of a new Term Highway Consultant will ensure the continued assistance in the delivery and management of important aspects of the highway service, enabling the authority to carry out its duty to maintain the highways network and related infrastructure under the Highways Act and other legislation.
12. A new Consultant would also enable delivery of the Wiltshire Council Business Plan priorities of Growing the Economy and Strong Communities in terms of improving road and rail infrastructure, supporting housing and employment growth by tackling the maintenance backlog on the roads, addressing congestion and 'pinch points' on the road network and successful bidding for future government funding linked to the delivery of the Swindon and Wiltshire Strategic Economic Plan, funding of new infrastructure and improvements to the strategic roads and rail network.

13. Any new Consultancy Contract will need to provide access to suitable staff with the necessary skills and qualifications to enable them to deliver the full range of services and outcomes required by the Authority. They will need proven experience in highway works and be able to provide designs in accordance with Current EU requirements and any regulations specific to English Law.
14. Since the first Highway Consultancy Contracts in 1999, the opportunity has been taken from time to time to review what has worked and not worked well during the contracts, and this information has been used to design a progressively better service each time it has been tendered.
15. A particular success under the current contract has been the ability to enable other Wiltshire Council services to use the Consultants to obtain additional professional and specialist advice.
16. These services have expressed their desire to continue to have access to the new Consultancy service should a new contract be re-procured.
17. Prior to the tender of the current Consultancy Contract a market analysis was undertaken, including soft market testing, and the options were considered in considerable detail. The conclusion was that Wiltshire Council should tender a single Consultancy Contract.
18. There have been no significant changes in the market since then, and in the circumstances it is unlikely that further market analysis would result in any change to the type of contract needed to meet the Council's requirements.
19. Gloucester County Council has recently reviewed its highways procurement requirements and is in the process of tendering for a single term consultancy. Swindon Borough Council is another authority who has recently outsourced this service to a single term consultancy.
20. The specialist nature of the varied services required, the number of resources required and the intermittent nature of the work flow mean it is more efficient to employ a term Consultant than to employ the necessary staff in-house.
21. The option of TUPE transfer of the staff currently providing these services to the Council could involve the transfer of fifty-one staff, possibly more, into Wiltshire Council with an annual staff salary bill of approximately £1.5 million, and consequent accommodation and support costs.
22. This does not include staff providing occasional specialist advice as their time spent on the contract would often fall below the level necessary for consideration for transfer under TUPE.
23. Even if the consultancy service were brought back in-house, there would still be a requirement for contracting some specialist consultancy work throughout the year.
24. Taking into account the knowledge gained since 1999 it is proposed that a new Highways Consultancy Contract should be retendered broadly similar to the current Highways Consultancy Contract.

## Overview and Scrutiny Engagement

25. The Overview and Scrutiny Highways and Streetscene Contract Task Group, who concluded their work in November 2016, had previously carried out a review of the current Consultancy Contract and concluded that the contract provided good value with a high number of staff employed with many years' experience working within Wiltshire. It is anticipated that these staff would transfer to any supplier under a new contract, continuing this continuity.
26. The Environment Select Committee considered this report at its 4 September 2018 meeting.

## Safeguarding Implications

27. The award of a new Highways Consultancy Contract will not have a direct implication for safeguarding children, young people or vulnerable adults as the services being procured are not services that directly interact with these vulnerable groups.
28. Conditions within the contract will require the successful tenderer to comply with current legislation and any subsequent updates as well the Council's Policies and Procedures for the Safeguarding Vulnerable Adults in Swindon and Wiltshire.

## Public Health Implications

29. A key outcome when designing new road layouts or specifying surfacing materials is that it reduces the possibility of accidents. The use of a Consultant with access to the latest design guides and specification, as well as a wider experience in the use of improved material technologies, will assist in the design of safe accessible road layouts, avoiding pinch points and congestion. In turn, improving air quality and promoting more highway use by pedestrians and cyclists.
30. The specification of the correct materials in road construction will provide improved driving conditions for cyclists, as well as motorists, and help reduce the numbers killed and injured on the road network.

## Corporate Procurement Implications

31. A Sourcing Plan has been developed jointly and agreed with the appropriate procurement officer to ensure the correct procurement procedures have been applied in considering the options and conclusion that will provide the best value for money with manageable risks. A copy of the procurement sourcing plan supports this document as **Appendix A**.

## Equalities Impact of the Proposal

32. An equality analysis has been carried out to assess the impact of procuring a new Consultancy Contract.

33. The procurement of a new Consultancy Contract would not directly affect vulnerable people or communities. However, staff employed by the current consultant could be affected; as that contract comes to an end the staff will have concerns around their future employment. TUPE rules will be applied to these staff.
34. The scope of a proposed new contract does not vary much from the current Consultancy Contract so this reduces the possibilities that staff working full time on the Wiltshire contract would not be eligible for transfer under TUPE.
35. There are other risks associated with legal and financial challenges in not ensuring that the correct procedures are followed when procuring and awarding a new contract, both around TUPE and the correct award of the contract. These can be mitigated by ensuring the correct legal and procurement processes are followed during the tender and award of the contract.
36. A further risk is to highway users, should highway improvement designs produced by the successful contractor result in death or injury. Checks will be made during the procurement process to ensure any tenderers have robust health and safety procedures and training programmes in place will mitigate this risk, ensuring that the authority is satisfied that the Consultant's designs will not put people at risk.

### **Environmental and Climate Change Considerations**

37. As budgets and workloads for a new Term Consultancy contract will remain similar to the current contract, the number of staff will also remain similar as will their requirement for office space, equipment and vehicles. Therefore, energy consumptions associated with office space, such as heating and electrical equipment, including computers as well as with vehicle usage, will remain at the existing levels.
38. The contract will require the new Consultant to provide a series of measures that they would put in place to demonstrate their approach to environmental considerations and innovations, including reducing their carbon emissions during the life of the contract. These measures will be set as key performance indicators linked to any award of contract extensions.
39. It is recognised that the nature of work provided by the Consultant can have a high impact on the environment.
40. Environmental considerations due to highway activities are an important consideration when planning and carrying out these works. A key aspect within the new contract, as in previous contracts, will be to ensure that the successful Consultant has a robust Environmental Plan in place that is periodically reviewed and kept up to date with the latest legislation, and covers all potential environmental hazards associated with highway activities on the surrounding environment.
41. The procurement of a new Highways Consultancy Contract also offers the authority the opportunity to obtain specialist technical support to achieve environmental improvements, especially in terms of reduced carbon footprint and recycling of materials in connection with the Works Contracts.

42. The new contract will not last longer than 20 years.

### **Risks that may arise if the proposed decision and related work is not taken**

43. If a procurement exercise to employ a new term Highways Consultant, following the end of the current contract, is not undertaken, the Authority would not be in a position to adequately deliver the design and management of a number of key highway services, as it does not have the necessary skills and numbers of staff in-house.
44. Through not being able to deliver these key highway services there is a high risk that the Authority will not be able to comply with its statutory and legal requirements under the Highways Act 1980 and Road Traffic Act 1988.
45. Failure to comply with these statutory and legal requirements would leave the Authority liable to legal claims for damages and could also result in reputational damage to the Council.
46. There is also a risk that this would affect the ability of the Council to meet some of its objectives in the Business Plan.

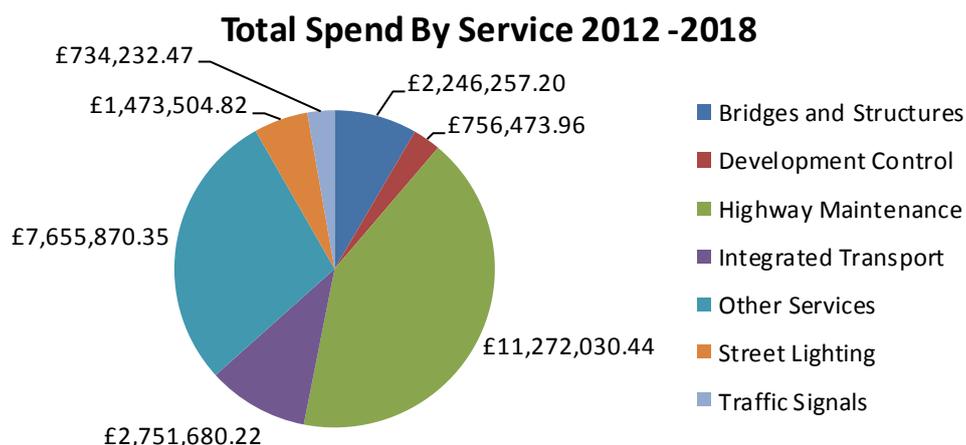
### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

47. There is a risk that the new tendered prices will be higher than the current rates, and it is important that the contract should be designed to avoid creating undue risk for bidders that could affect the price. The contract will need to cover the full scope of services likely to be required, and the assessment process will need to ensure the capability and capacity of potential suppliers.
48. The risk of suppliers ceasing to trade are generally low with this type of contract, but there is the possibility of companies being taken over or merging. Robust contract management processes will be in place to identify and manage any issues at an early stage.

### **Financial Implications**

49. The current budget for the Highways Consultancy Contract is approximately £5 million per year. The costs associated with a new Highways Consultancy Contract would be similar to the existing costs.
50. The annual contract spend to date on the current Consultancy Contract is shown in the tables below:

<b>Year</b>	<b>Annual Spend</b>	<b>Total Spend</b>
<b>2012-13</b>	£950,413.69	
<b>2013-14</b>	£4,791,492.48	
<b>2014-15</b>	£5,845,048.11	
<b>2015-16</b>	£5,801,980.96	
<b>2016-17</b>	£4,921,892.93	
<b>2017-18</b>	£4,579,221.29	
		<b>£26,890,049.46</b>



51. The current Consultancy Contract is currently funded from a mixture of capital and revenue budgets with an approximate average split of 78% and 22% respectively.
52. The majority of expenditure is for capital works, current funding arrangements are expected to continue for a new Consultancy Contract.
53. The potential for additional capital income to be generated with the assistance of a suitable consultant was realised under the current Consultancy Contract when bidding for additional central government funding.
54. An additional income of £17.919 million has been generated to date with the current consultant through successful bids. This would not have been possible without the consultant's input. It is intended that a new Consultancy Contract would provide the same assistance to be able to secure additional central government funding.
55. The benefit of this additional funding to the Authority is the ability to carry out more improvement schemes which otherwise may not happen due to cost constraints.
56. Revenue budget is also spent through the contract to support to critical services. Current funding arrangements are expected to continue for a new Consultancy Contract.

### **Legal Implications**

57. The Council has a duty to maintain the highways network and related infrastructure. The appointment of a new Consultant will ensure the continued assistance in the delivery and management of these important aspects of the highway service, and help ensure that the Council meets its obligations under the Highways Act and other legislation. A new Contract and the appointment of a suitable Consultant will help ensure that the services are provided to the standard necessary for the Council to fulfil its statutory duties.

58. The appointment of a new Consultant will involve the transfer of staff under TUPE from the existing service supplier to the new supplier and will be managed, with appropriate legal advice, as part of the contract procurement and transition process. This will include the protection of pension rights of transferring staff through either access to the Local Government Pension Scheme or a broadly comparable scheme, details of which will be negotiated with the new supplier.
59. It is important that the procurement process and contract award follow the correct processes in order to avoid legal challenges during the process which could delay or prevent the start of any new contract.

### **Options Considered**

60. The following procurement options have been considered.

#### Bringing the consultancy services back in-house

61. The in-house provision of the full range of Consultancy services to be provided by the contract would not be feasible as many of the services provided through the existing contracts are of a specialist nature, and it would not be practical or cost-effective for this Council to employ staff to carry out this work which is required intermittently and irregularly. These services include specialist bridge works, major highway works and surfacing, street lighting maintenance and improvement and management of traffic signals.

#### Using a Framework Agreement

62. The use of Framework Agreements to provide specialist services on demand, or to top up in-house provision, can provide competitive prices based on rates agreed as part of the agreed terms and mini competitions for the services. However, Agreement rules can be more restrictive than other contracts. The general length of a framework contract is only four years. TUPE becomes complicated with multiple suppliers, and there is a risk of Consultancy resources not being available at short notice.

#### Breaking the service into smaller packages

63. Breaking the services into individual packages and procuring different consultants for each package through individual contracts may result in specialist companies dealing with particular packages and could deliver competitive prices. However, TUPE issues would be complicated, especially if staff time is divided between more than one package. This approach can lead to the creation of 'silos', with design and supervision works divided between multiple individual consultants. Managing many contracts would require more client input. The smaller contracts would be less attractive to the larger consultants, so there may be less depth of experience available for the more specialist work.

#### Procurement for a single supplier

64. Procurement of a contract for a single supplier would be more attractive to the larger consultancies and the benefits that they can bring are providing additional access to more specialist knowledge.

65. Having one consultant managing all the consultancy operations would provide better co-ordination between services, and require only one management system for the service. This would also remove the potential for inter-company friction. TUPE arrangements would be simpler with only one company involved. This approach has been taken with the previous two Highways Consultancy Contracts and has proved to be successful, with staff understanding how it works when ordering services.

## **Conclusions**

66. Taking into account the knowledge gained since 1999, it is recommended that tenders should be invited for a single supplier to provide Wiltshire's Consultancy services from December 2019.
67. Awarding a Highways Consultancy Contract similar to the existing arrangement should offer the best value for money with manageable risks.

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**The following unpublished documents have been relied on in the preparation of this Report:**

None

## **Appendices**

Appendix A - Procurement Sourcing Plan