

## Wiltshire Council

### Cabinet

11 October 2022

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**Subject:** New Term Highways Maintenance Contract - Results of Procurement Exercise

**Cabinet Member:** Cllr Dr Mark McClelland – Cabinet Member for Transport, Waste, Street Scene and Flooding

**Key Decision:** Key

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#### Executive Summary

Following the decision by Cabinet in January 2022 for the Director of Highways and Transport to invite tenders for a new supplier to provide the Term Highway Maintenance Services, and to report the results of the procurement exercise back to Cabinet to consider the proposals for award of contract a procurement exercise has been undertaken for a new highways contract.

The new contract will include the provision of routine highways maintenance, Parish Stewards, pothole repairs, winter gritting, street lighting and the implementation of safety and Local Highway and Footway Improvement Groups (LHFIG) schemes. It also includes the provision for additional spend on works funded through external bids, and the option to allow other Wiltshire Council services to order works through the contract. The new contract will start on 1 April 2023. It is anticipated that annual expenditure through the contract is likely to be in the region of £15,000,000.

The Procurement of the new contract has followed the restricted procedure advertised in accordance with the EU Procurement Rules. This involved a list of tenderers being invited to bid following an initial selection process based on their capabilities and experience. This ensured that those being invited to tender met the minimum requirements to deliver the services

Following the publishing of the Official Journal of the European Union (OJEU) notice, 35 firms (made up of both smaller and larger companies), viewed the documents and six expressed an intent to respond via the supplying southwest portal. Subsequently, three firms submitted documents requesting to be on the tender list, and these were evaluated.

Based on the evaluations by a team comprising service managers and highways officers, with representatives of the Corporate Procurement team acting as moderators, a list of three potential tenderers was prepared.

The submitted tenders have been assessed in terms of cost, quality, carbon and social value, using Price/Quality/Carbon/Social Value award criteria of 40/30/20/10 described in the tender documentation.

The detailed scoring and financial information are contained in a confidential report to be considered in Part 2 of this meeting.

### **Proposal**

The proposal is to be considered as a Part 2 Item at this meeting.

### **Reason for Proposal**

- (i) There is a need for a specialist contractor to deliver the Council's highways and related services when the existing contract ends on 31 March 2023.
- (ii) Following a robust procurement exercise in accordance with the 'Restricted Procedure' tenders were submitted by three companies, which were assessed in terms of price, quality carbon and social value.
- (iii) The most advantageous tender for the Council, taking into account price, quality, carbon and social value, should be accepted in accordance with the procurement procedures. The detailed scoring and financial information are contained in a confidential report to be considered in Part 2 of this meeting.

**Terence Herbert**  
**Chief Executive**

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### Purpose of Report

1. To consider the award of the Term Highways Maintenance Contract.

### Relevance to the Council's Business Plan

2. The Council's Highways Maintenance Contract helps meet the priorities of the Council's Business Plan Principles 2022 to 2032 including:
  - a. We have vibrant well-connected communities
  - b. We ensure decisions are evidence-based
  - c. We take responsibility for the environment
  - d. We are on the path to carbon neutral (net zero)
  - e. We are safe
  - f. We stay active
  - g. We have the right skills to prosper
3. The new Highways Maintenance Contract will deliver a wide range of highway related services that will help the Council deliver its Business Plan and meet its statutory duties as highway authority.

### Background

4. The Council's highways maintenance service has been primarily delivered through the Wiltshire Highways Contract, which was awarded to Ringway Infrastructure Services Limited on 29 January 2016. The contract started on 1 April 2016 and comes to an end on 31 March 2023.
5. On 11 January 2022 Cabinet approved for the Director of Highways and Transport to invite tenders for a new supplier to provide the Term Highway Maintenance Services, and to report the results of the procurement exercise to Cabinet to consider the proposals for award of contract. An outline of the highways services to be provided under the new highways contract is included in **Appendix 1**.
6. The new contract will include the provision of routine highways maintenance, Parish Stewards, pothole repairs, winter gritting, street lighting and the

implementation of safety and Local Highway and Footway Improvement Groups (LHFIG) schemes. It also includes the provision for additional spend on works funded through external bids, and the option to allow other Wiltshire Council services to order works through the contract.

7. It is proposed that the new contract will come into operation on 1 April 2023 so that there is a continuation of the provision of the highway maintenance services when the existing contract ends. A summary of the main provisions of the new contract is included in **Appendix 2**.

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

8. The new contract offers the opportunity to establish a new long-term relationship with a contractor to work in partnership with the Council to deliver the highway service.
9. The contract will be for five years, with a further five years extension subject to performance, which would be monitored continuously and assessed annually. This will be an incentive for consistent good performance.
10. The procurement process that has been followed will ensure that the new highways contractor will be an established company with a proven track record in highways maintenance with the capacity and capability to deliver the service.
11. The new contractor will be required to make full use of technology to identify and record works undertaken.
12. The procurement of the new contract has followed the 'Restricted Procedure' which is a two stage process. The first stage was for bidders to submit information to enable them to be considered for inclusion on a list to be invited to tender.
13. The second stage was for the short listed tenderers to be issued the Invitation to Tender (ITT) documents, which had to be completed and returned by the closing date of 8 September 2022. The tender documents included both price and quality elements which are taken into account in awarding the contract.
14. Following the issue of a Prior Information Notice (PIN), published on the Find a Tender Service (FTS), a market engagement event in the form of a webinar was held on 29 November 2021. This was open to any potential providers and was well attended. A presentation was delivered to attendees to enable them to understand the scope of the contract and the timescale for procurement.
15. The market engagement event was followed up with one to one contractor engagement meetings with seven contractors who expressed an interest in bidding for the new Wiltshire Term Highways Maintenance Contract.
16. The programme for the procurement of the contract is shown below:

<b>Event</b>	<b>Date</b>
Market Engagement Event	29 November 2021
Stage 1 SQ Issued	13 April 2022

Deadline For Clarification Questions – 17:00 hrs	27 April 2022
Target date for responses to clarifications	4 May 2022
Deadline for Submission of Stage 1 SQ - 12 noon	24 May 2022
Evaluation of Stage 1 SQ	25 May – 10 June 2022
Notification of Evaluation decision	15 June 2022
Stage 2 Invitation to Tender Issued	17 June 2022
Deadline For Clarification Questions – 17:00 hrs	18 August 2022
Target date for responses to clarifications	25 August 2022
Deadline for Submission of Tenders – 12 noon	8 September 2022
Evaluation of Tenders	9 - 30 September 2022
Award Decision	5 October 2022
Cabinet Approval to Award Contract	11 October 2022
Standstill Period	12 – 23 October 2022
Formal Contract Award	November 2022
Contract Start Date	1 April 2023

#### Selection Questionnaire

17. Following the publishing of the Official Journal of the European Union (OJEU) notice, the Selection Questionnaire (SQ) was made available to potential bidders. The SQ requested information about the bidder, including financial information, business and professional standing, health and safety, equal opportunities and diversity, environmental management, quality management and previous experience.
18. There were 35 companies that viewed the notice, made up of both smaller and larger companies. Six companies expressed an intent to respond via the supplying southwest portal.
19. The returned SQs were assessed in accordance with the process set out in the document and were scored by a panel of Council officers to identify a list of organisations to be invited to tender.
20. In compliance with the Public Contract Regulation 2015, all the documents (the SQ and the Draft Tender Documents) were made available on the same day. This was to allow all the potential bidders to view the documents and the requirements of the Council, to be able to make an informed decision on whether to submit a completed SQ.
21. By 24 May 2022, which was the deadline to receive completed SQs, three firms had submitted documents, and one firm had indicated that they were unable to submit an SQ at this time as their bid team were working on other bids and so would not have sufficient resources to submit a bid for the Wiltshire Contract.
22. Based on the evaluations by a team comprising service managers and highways officers, assisted by representatives of the Corporate Procurement team acting as moderators, a list of three potential tenderers was prepared.

23. It is considered that the three companies invited to tender represented a suitable tender list of firms with the capacity and capability to deliver the contract.

#### Invitation to Tender

24. The tender documents, which include a Price List and a Quality Submission questionnaire, were issued to the selected list of bidders on 17 June 2022.
25. There were 154 tender clarification questions received from tenderers, which mainly concerned TUPE, pensions, clarifications on the scope of the contract, requests for information on current outputs and costs, and suggestions for amendments to the contract document. Responses were provided to all the requests.
26. The tenders were returned on 8 September 2022, and assessments of the quality and cost aspects of the bid were undertaken.

#### Quality Assessment

27. The Quality Submission (QS) comprises three parts:

- Part 1 Quality Questions
- Part 2 Carbon Questions
- Part 3 Social Value Questions

28. Each part consists of a number of questions the tenderers had to complete, under the following headings:

#### **Part 1 Quality Questions**

- Management Structure
- Mobilisation and Depots
- Overheads
- Undertaking Specialist Works
- Working with Others on the Highway
- Local Highways and Parish Stewards Operations
- Winter and Emergency Services
- Street Lighting Maintenance Service
- HIAMS Interface
- Finalising Works Orders
- Works Co-ordination and Permitting

#### **Part 2 Carbon Questions**

- Verifiable Carbon Reductions
- Carbon Reductions
- Carbon Reduction - Fleet
- Conserving the Natural Environment
- Circular Economy
- Water Quality and Efficiency

#### **Part 3 Social Value Questions**

- Employment Opportunities for Disadvantaged People
  - Employee Retention and Training Opportunities
  - Staff Wellbeing and Equality
  - Cyber Security and Service Continuity
  - Working with the Community
  - Additional Social Value Benefits
29. The QS responses were assessed and scored by a panel comprising Heads of Service and other staff who have extensive experience of the type of work being undertaken through the contract. The weightings given to each aspect of the QS are described in **Appendix 3**.
30. The scores for each part of the QS are totalled, the QS score for each tender is expressed as a score against the maximum points available and multiplied by the relevant award criteria. The scores for each part of the QS are then totalled to give the tenderers overall QS evaluation score.
31. The outcome of the QS questionnaire assessment is reported in the Part 2 item to be considered at this meeting.

#### Price Assessment

32. The tenderers had to complete a Price List of items which reflected the range of work to be procured through the contract.
33. Tenderers completed and submitted a Price List which contained a schedule of rates and items for the work most likely to be required under the contract. This included a mixture of rates for different types of measured work and fixed sums for specific elements of work.
34. These rates were used to price a basket of goods consisting of items which represented the typical annual expenditure anticipated through the contract.
35. A weighting of 85% of the price award criteria was applied to the basket of goods score. The lowest annual value calculated from the basket of goods was awarded 85%. The basket of goods scores for all the other tenderers were calculated by dividing the lowest annual basket of goods value by each tenderer's annual value in turn.
36. The tenderers provided their direct fee and sub-contract fee percentages for on-costs and multipliers to be applied in certain circumstances in accordance with the terms of the contract.
37. A weighting of 7.5% of the cost award criteria was applied to each of the direct fee percentage scores and sub-contractor percentage scores. The lowest scores were awarded 7.5%, the scores for all the other tenderers were calculated by dividing the lowest percentage value by each tenderer's percentage in turn.
38. Each score is added to give the total price assessment score for each bidder.
39. The outcome of the price assessment is reported in the Part 2 item to be considered at this meeting.

### Comparison of bids

40. The tender assessment process has recognised the importance of obtaining cost-effective services but has also acknowledged the importance of the quality of the services to be provided by the contractor. The bids have been evaluated in accordance with the previously agreed proportions:

Price – 40%  
Quality – 30%  
Carbon – 20%  
Social value – 10%

41. The quality and price scores of the tenderers were combined to determine to determine an overall score for each bidder. The full details of the assessment are described in the Part 2 item to be considered at this meeting.

### Next Stages

42. Following a decision to award the contract there will be a ten-day standstill period during which other tenderers may make a legal challenge to the award of the contract.
43. Subject to the outcome of the decision by Cabinet, and assuming no legal challenge is received, the intention is to enter into the contract as soon as possible in order to provide the maximum lead in time before the contract starts on 1 April 2023.
44. There will be a significant amount of preparatory work for the successful bidder in arranging the necessary plant and equipment, communications systems, and infrastructure, as well as ensuring that the contract is suitably staffed.
45. The new contract will require changes to how some services are delivered, especially with regard to carbon impacts as the new supplier will need to develop services that can demonstrate a reduction of carbon throughout the life of the contract. These arrangements and recording methods will need to be agreed with the Council officers.

### **Overview and Scrutiny Engagement**

46. The Environment Select Committee were previously informed of the process being followed for the procurement and made observations regarding the options being considered for replacing the current highways maintenance contract when the annual service review was reported to them in January 2022.
47. The Chairman and Vice-Chairman of the Environment Select Committee received a briefing about the current assessment on 7 October.

### **Safeguarding Implications**

48. None

### **Public Health Implications**



49. The condition of Wiltshire's roads and related infrastructure can have serious safety implications.
50. The continued maintenance of the highway network ensures that Wiltshire's roads are kept in a safe condition for public use and thus reduce accidents, especially with regard to skid resistance and structural defects.
51. The continued maintenance of footways and cycleways contributes to peoples' safe use and enjoyment of their environment and to their mental and physical wellbeing.
52. The health and safety record and procedures of the bidders have been taken into account in assessing the bids.

### **Procurement Implications**

53. The procurement has followed the Restricted Procedure, which is a two-stage process, with the relevant OJEU notices and procedures.
54. The scope and details of the new contract take into account a number of factors, including revenue funding pressures, public expectations, winter maintenance requirements and legal obligations to maintain the highways network.
55. The Council's Procurement Team has been actively involved in the process and has monitored the procurement and tender assessment process to ensure it is carried out properly and to reduce the risk of a legal challenge. The detailed scoring and financial information on the tender assessment is contained in a confidential report to be considered in Part 2 of this meeting.

### **Equalities Impact of the Proposal**

56. The new highways contract will result in existing employees of current contractors and sub-contractors having rights under TUPE legislation. The Council will work with the contractors and sub-contractors to determine whether TUPE is applicable and to make the appropriate arrangement to meet any legal obligations.
57. The successful tenderer has been required to demonstrate good practice in terms of employment policies and practices and conform to the Council's standards and values. The tenderers' employment policies have been taken into account in assessing the tenders.
58. The tenderers included a range of social value proposals which were considered in the tender assessment process. These included equality and diversity training, living wage requirements, local employment, jobs for armed forces veterans, apprenticeships, and work experience opportunities.

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

59. The successful tenderer's quality submission responses include a series of measures that they will put in place to reduce carbon emissions associated with their operations during the life of the contract and how they will evidence these

reductions. These measures include year on year targets for Scope 1 and 2 Carbon intensity reductions, proposals for reducing Scope 3 carbon intensity, and reducing fleet CO<sub>2</sub> emissions. These targets will be used to form key performance indicators linked to the award of the contract extension.

60. The effects of climate change are likely to have significant effects on the highways network with increased incidents of flooding and temperature extremes causing more frequent damage to the roads, footways, and drainage systems. Having a suitable highways contractor in place will enable robust responses to be made to immediate problems and will assist in developing strategies and investment to improve the condition of the network to help build resilience into the infrastructure.
61. The maintenance of highways, verges, landscaped areas and watercourses carried out by the highways services can have an important influence on the local ecology and environment in Wiltshire, and this has been taken into account in assessing the quality evaluation responses.
62. The tender assessment process for the new highways contract has considered the environmental policies of the tenderers in the quality evaluation.

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

63. There are significant risks associated with the Council's highways operations, especially in terms of health and safety, and in financial and reputational risks to the Council.
64. It is important that a suitable contractor is appointed to enable the contract to start on 1 April 2023 when the existing contract ends. In the event of the contract not being awarded it should be possible to make temporary arrangements with existing suppliers. However, there would be risks associated with this as resource levels would be likely to be reduced, which could result in delays in dealing with potholes and other issues on the highway.
59. There would be cost implications in making temporary arrangements to continue to deliver services in the short term in the event of there being a delay in awarding the contract, or in retendering all or some of the works. The early award of the contract and an early start would reduce the potential adverse impact of costs and potential poor service delivery.
65. There could be a risk of increased accidents, claims and public dissatisfaction if highway maintenance is not delivered effectively, or is delayed as a result of procurement issues. These may arise if suppliers are unwilling to continue to provide the services to the level required by the Council. At present, with the current progress on procurement, this seems unlikely, but the situation will continue to be monitored.

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

66. There is a risk that despite the stringent procurement procedure and assessment processes that the selected contractor does not meet expectations and performance is not as good as anticipated.

67. Careful consideration has been given to the scope of the new contract including recording and managing the contractor's performance through the use of key performance indicators. This approach has been successful on the current contract and will continue with the new contract, with reports on performance being made on a regular basis to the Environment Select Committee, or as required.
68. Current levels of inflation are causing uncertainty, and the situation will continue to be monitored. However, with limited budgets the volume of work ordered from the contractor may reduce, especially if there are more budget reductions in the future. The contract rates are linked to indices and will change, especially if the current high inflation continues. This reduces the risk of an early termination of the contract due to unsustainable cost increases having to be absorbed by the contractor.
69. There has been significant capital funding for highways maintenance and improvements in Wiltshire in recent years, despite the overall difficult financial situation. However, the increasing workloads in the public and private sectors are causing resourcing concerns across the industry which could affect future delivery of the Council's highway maintenance.
70. There is a risk that there could be a legal challenge to the contract award. There is a ten-day standstill period following award during which this could happen. The processes followed in procuring the contract have followed the required procedure in order to reduce this risk.

### **Financial Implications**

71. The anticipated expenditure through the contract is likely to vary from year to year depending on budgets and priorities. The annual expenditure through the contract is expected to be in the region of £15 million,
72. Currently high inflation is having a global effect on prices. This may impact on the amount of work that can be ordered through the new term maintenance contract, as the rates in the contract provides for regular adjustment of prices in accordance with industry published indices.
73. The assessment of the tenders for the new contract has included detailed consideration of the financial aspects, with a weighting of 40% given to the cost elements. Taking into account the specific requirements of the service, the council's aspirations, and the risks associated with maintaining the highway network it was considered that this weighting is appropriate.
74. A representative basket of goods of anticipated work expected to be ordered through the contract has been used to carry out an assessment of the financial implications of the tenders. The financial implications of the award of the new contract are discussed in the Part 2 report which will be considered at this meeting.

### **Legal Implications**

75. The Council has a duty to maintain the highways network and related infrastructure. The new highways contract will deliver important aspects of the highways service and will help ensure that the Council meets its obligations under the Highways Act and other legislation. The new contract, and the appointment of a suitable supplier, will help ensure that the services are provided to the standard necessary for the Council to fulfil its statutory duties.
76. Any transfer of staff under TUPE from the existing service suppliers to a new supplier will be managed, with appropriate legal advice, as part of the contract transition process. This will include the protection of pension rights of transferring staff through either access to the Local Government Pension Scheme or other appropriate scheme, details of which will be negotiated with a new supplier.
77. 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 arrangements.

### **Workforce Implications**

78. There are no direct workforce implications for Wiltshire Staff. The current structure and the roles undertaken by staff would continue to operate in a similar way to the current contract.

### **Options Considered**

79. It is necessary for the Council to award a new highway term maintenance contract, or to make alternative arrangements, because of the legal responsibilities and the importance of the highway service to the Council and the communities in Wiltshire. There are significant safety, legal, reputational and financial risks associated with not having a suitable contractor for the highways service.
80. The tenders submitted for the new contract have been assessed in terms of price and quality in accordance with the agreed procedure, and the most suitable tenderer has been identified.

### **Conclusions**

81. A Robust procurement process has been undertaken to ensure appropriate arrangements are made for the continuing provision of the highway service.
82. The result of the assessment to identify a preferred bidder is described in the Part 2 item to be considered at this meeting. The most advantageous tender for the Council, taking into account quality and price, has been identified in accordance with the procurement procedures.

**Samantha Howell Peter Binley (Acting Director - Highways and Environment)**

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Date of report

## **Appendices**

Appendix 1 – Outline of the highway services in the new contract

Appendix 2 – Summary of the main provisions of the new contract

Appendix 3 – Weightings of each aspect of the quality submission questions.

## **Background Papers**

The following documents have been relied on in the preparation of this report:

None