

Wiltshire Council

Cabinet

11 January 2022

Subject: **New Term Highways Maintenance Contract**

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

Key Decision: **Key**

Executive Summary

The current Term Highway Maintenance Contract for routine highway maintenance works will come to an end at midnight 31 March 2023.

The current contract is the fourth consecutive Term Highway Maintenance Contract that has been awarded.

The average spend on the current contract is £15 million per year; this is likely to remain similar for the new contract. Although 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 will need to be included in the contract.

A procurement exercise has been undertaken and considered the various options that will enable the continued provision of the highway maintenance service and ensure that Wiltshire Council is able to undertake its legal and statutory duties as the Highway Authority when the current contract ends.

Options also considered how the future provision of the service will provide carbon reduction in line with the Council's commitment to become carbon neutral by 2030.

These options have been considered by the Corporate Leadership Team who have made their recommendations for the proposals to Cabinet.

Proposals

That authority is delegated to the Director Highways & Environment, in consultation with the Cabinet Member for Transport, Waste, Street Scene and Flooding, to:

- (i) Invite tenders in accordance with the Council's procurement procedures, for a single supplier to provide Wiltshire's Term Highways Maintenance

Services for a duration of five years with the option to allow the service manager to extend the contract for up to five more years subject to performance from 1 April 2023.

- (ii) Report the results of the procurement exercise back to a future Cabinet when the tenders results are received, for Cabinet to consider the proposals for award of contract.

Reason for Proposals

These proposals constitute a key decision to be made by Cabinet in accordance with Part 1 item 4.2.7 of the Wiltshire Council Constitution.

The procurement of a new Term Highway Maintenance contract will have an annual value in excess of £1 million and the total contract value will exceed £4 million.

Terence Herbert
Chief Executive

Wiltshire Council

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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 highways maintenance services when the current Term Maintenance Contract comes to an end on 31 March 2023.

Relevance to the Council's Business Plan

2. Procurement of a new Highways Maintenance Contractor will help meet the priorities of the Council's Business Plan 2017 – 2027, including

Growing the Economy

- Road Infrastructure is improved through tackling the historic maintenance backlog on the roads and bringing the county's road network to an acceptable standard in line with the Highways Asset Management Strategy.
- Improved road conditions to improve safety and reduce the levels of those killed or seriously injured.

Strong Communities

- Reduced road casualties through improved road conditions to improve safety and reduce the levels of those killed or seriously injured.
- Reduced risk of floods and other threats through maintaining and improving the existing systems and the provision of new systems.

Climate Emergency

- Assisting the Council to become carbon neutral by 2030 through the use of more environmentally friendly materials and construction processes and through the use zero-emission vehicles.

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 and approximately 50,000 street lighting columns and illuminated signs and bollards. The Highways asset is currently valued at over £5 billion. The management, maintenance and improvement of this infrastructure require a high level of technical expertise to meet the legal, technical, and financial challenges they present.
4. Wiltshire Council currently contract Ringway Highway Services Ltd to provide the routine highway maintenance service.
5. The current contract is in its 5th year and will come to an end on 31 March 2023.
6. The contract provides the necessary services to enable the routine highway maintenance operations to be undertaken.
7. The contractor successfully secured a maximum two year extension due to their performance.
8. It is likely that around 120 employees could be eligible for TUPE transfer at the end of the current contract.

Main Considerations for the Council

9. New arrangements need to be put in place to ensure that the routine maintenance operations can be continued when the current contract ends in order that the authority continues to comply with its statutory duties in maintaining the highway network.
10. A current procurement exercise is underway and a steering group setup to oversee the process to consider the options for future arrangements when the current contract ends.
11. Consideration of any procurement option needs to include for the provision of the following highway maintenance services:
 - Local Highways
 - Safety Repairs
 - Reactive Service
 - Routine Maintenance
 - Cyclic Operations
 - Parish Stewards
 - Minor Works
 - Integrated Transport
 - Improvement Schemes
 - Signing Works
 - Lining Works
 - Handrails and Barriers
 - Structures

- Maintenance and Repairs
- Bridge Replacements
- Culverts
- Drainage
 - CCTV Investigations
 - Repairs
 - New Drainage Systems
 - Reactive Works – flooding etc.
- Street Lighting
 - Inspections
 - Maintenance
 - Repairs
 - Replacements
 - Lighting Schemes
 - Checking Third Party Christmas Lighting across the Highway
- Winter Service
 - Provision of Gritter Drivers
 - Call-outs, and Standby
 - Vehicle Management
- Out of Hours Emergencies Service
 - Out of Hours Standby
 - Responding to Reactive Issues on the Highway
- Works Programming and Supervision
- Streetworks Coordination
 - Permits

12. Further consideration is also required on how these highway maintenance services will provide carbon savings to allow the Council to achieve its commitment to become carbon neutral by 2030. This will also include social value commitments that will benefit the community of Wiltshire.

Procurement options

13. The following procurement options have been considered in order to agree the most suitable option to replace the current contract when it ends.

- Do nothing
- Insource the services necessary to undertake the Highway Maintenance Services
- Procure a framework contract
- Retender a similar contract

14. Do nothing

This is not a viable options as Wiltshire Council has a legal duty as the Highway Authority to maintain the highway network in a safe condition.

Failure to do so could result in death or injury to the highway user, and the Council could be liable and subjected to costly claims for damages, or even corporate manslaughter.

This would also cause reputational damage to Wiltshire Council.

Wiltshire does not currently have the inhouse resources able to take on this type of work.

Doing nothing would also have an impact on the ability to meet some of the priorities of the Council's Business Plan.

15. Insourcing the services necessary to undertake the Highway Maintenance Services

Nationally some Local Authorities are considering bringing more of their services back inhouse as they see the potential benefits as:

- Reduced costs,
- improve quality,
- better-integrated services and, or
- increase flexibility over how services are run.

The "Government Outsourcing Document from the Institute for Government June 2020" suggest the following circumstances be considered to identify if insourcing would be beneficial:

- The market from which local the authority is buying the service is not healthy or competitive.
- The local authority needs flexibility to make frequent or significant changes to the design and scope of the service, in view of changing policy and budget priorities.
- The local authority lacks the commercial skills to procure or manage an outsourced contract successfully.
- The service could be improved and/or savings made by integrating it with another service.

It follows that by working through these circumstances that the outcome can also indicate if insourcing is not the correct option. (note: the word "*the local authority*" has been used to replace the word "*government*" for the purpose of this exercise)

16. The market from which the local authority is buying the service is not healthy or competitive

There are a number of established contractors who have successfully provided a highway maintenance service to local authorities since the 1980's.

The initial market would have included many more contractors but over time the number of contractors who operated in this market has reduced to a core number of contractors who have since become specialists in providing local authority highway maintenance services.

There is already initial contractor interest in the Wiltshire contract, partly driven by the number of similar contracts due to be tendered over the next four years by nearby authorities. The contractors see Wiltshire as a

logistically suitable location to operate alongside a number of these similar contracts.

Having a number of similar contracts going out to tender in this part of the country over the next few years, brings the opportunity for contractors to consolidate operations and management levels and costs by securing a few of these contracts. So interest for the Wiltshire Contract could be high.

17. The local authority needs flexibility to make frequent or significant changes to the design and scope of the service, in view of changing policy and budget priorities.

Whilst changing policy and budget priorities are key considerations for the Council when tendering any service. the Council, as the Highway Authority, has legal duties to maintain the highway in a safe condition in accordance with the Highways Act. So whilst design changes can and do occur during a contract these are occasional changes, often increasing the service rather than reducing it, or, as in the case of the COVID pandemic adapting to circumstances.

Wiltshire's highway maintenance budgets have traditionally been set to enable these duties to be undertaken.

Whilst the maintenance budget may vary from year to year, minimum annual spend levels have always been indicated in the previous highway maintenance contracts. These spend levels have not varied too much since the first highways maintenance contract was outsourced.

It is anticipated that the budget for the foreseeable future will not take the annual highway maintenance spend below the minimum spend level.

There is no evidence from previous contracts or any indication that during a new contract that there would be a need for significant changes to the scope or large reductions in the budget.

18. The local authority lacks the commercial skills to procure or manage an outsourced contract successfully.

Wiltshire highways have a proven track record of successfully procuring and managing its highway contracts.

The highway maintenance contract has successfully been tendered since 1999 (then under Wiltshire County Council).

These contracts have continued to evolve by taking what has works well and removing what did not from each contract in the development of the scope for each new successive contract.

Even with the issues and early termination of the previous contract, this was managed in such a way that services were maintained until a suitable contract could be properly procured.

19. The service could be improved and/or savings made by integrating it with another service.

As Wiltshire Council does not have the inhouse services capable of carrying out the highway maintenance activities this activity cannot be integrated with another service other than through a contractor.

Previous attempts to integrate highway services with the district functions of streetscene, grounds maintenance, churchyard maintenance, etc. was not successful. Service levels were variable as the contractor struggled to meet the full requirements of the scope over such a large number of activities.

One of the lessons learned from that contract was that splitting the services down into smaller more specifically focused contracts is more beneficial for Wiltshire's highways operations. Also having a number of smaller resources based contracts which have a slight overlap, provides additional contingency to maintain services should one of the contracts experience difficulties.

20. Additional Considerations

If Wiltshire were to consider insourcing its highway services, this would be better being considered as part of a strategic plan that includes insourcing most, if not all, of these services, rather than bringing them in ad-hoc. Having some maintenance services inhouse and some provided through a contractor can result in different levels of services provided, which could cause confusion and also affect any potential cost saving, if any are to be made through insourcing.

In order to bring these services inhouse the Council would need to employ a new management team with sufficient experience to run these services, provide any necessary ongoing training for the operatives and suitable depots to operate from. In addition there would need to be significant investment in operatives vehicles and specialist plant necessary to carry out the operations, the ability to retain a stock of materials for urgent highway repairs and ensuring that a minimum number of staff are always employed and available to carry out essential operations, particularly during winter. Therefore any cost saving would take a number of years to be realised.

Staff recruitment and retention is also currently a challenge throughout the Highways Maintenance industry, and the Council may find it difficult to retain or attract new staff during life of the next contract.

An additional benefit of contracting out the service is that the private sector often has good access to expertise and capacity for research into innovation and new technologies.

21. Procure a framework contract

A Framework Contract is unlikely to provide best value, particularly as framework Contracts are generally only four years in length.

The highway maintenance operations require significant investment in plant and machinery, which need to be recovered through the contract rates. The impact of recovery costs on rates would therefore be reduced as the length of the contract is increased.

This type of contract would also require more time in setting up mini competitions and awarding Lots, as well as separate management of each Lot.

Many of the maintenance operations covered in the term maintenance contract are similar, they quite often involve urgent responses to repair or make safe defects. Having multiple Lots with different Contractors providing services can become confusing and cause delays when attempting to get some urgent works carried out.

An additional risk with a framework is that no prices are submitted in the mini competition or that the works cannot be undertaken to suit our programme.

The Council has already separated delivery of specialist services including the Machine Surfacing, Surface Dressing, Traffic Signals and Arborist Services, which are now run as separate term contracts.

Also the larger Bridge and Structures works which can be quite varied and tend to require specialist suppliers to undertake the works would suit a Framework Contract.

22. Retender a similar contract

A single supplier can provide more competitive rates based on sufficient works to maintain a suitable sized workforce when they have a long-term commitment of work.

Works programming can be easier as resources would be available throughout the duration of the contract.

The current contract has worked well to date, the scope covers the necessary works, and it gives the option to also carry out other highway works when additional funds permit, without the need for further procurement of additional contractors.

A review of the current contract would allow any additional improvements to be made for a new contract.

Ordering works through a single supplier is more efficient and less confusing for operational staff than ordering works through multiple suppliers.

Carbon reduction would be easier to establish with one supplier especially over a ten year contract as this will allow future technology changes in vehicle emissions to be brought into the contract and the cost spread over a longer period.

23. Procurement option recommendations

The option that would ensure Wiltshire's duties as the Highway Authority can be undertaken and provide the best value without incurring an initial financial outlay by the Council is to Retender a contract to provide similar services as the current contract.

It is recommended that a single supplier be procured via a two stage tender process for the provision of a new term highways maintenance contract to commence on 1 April 2023.

24. **Consideration for the length of contract award**

Information from other Highway Authorities who are or have recently been procuring similar contracts is as follows

- (a) Contract lengths vary, 10 to 12 years seems to be the most common.
- (b) Extensions built into the contract period and spaced out during the initial contract period or awarded as a single extension subject to continued satisfactory performance levels incentivise providers to perform well.
- (c) One issue that is currently being considered is how the Contractor can factor carbon reduction through large vehicles emissions during the contract period. Currently, there is limited investment on electric HGV's and there is a potential for other alternatives to electric vehicles to come along during the length of the contract.
- (d) If the Contractor is unable to source suitable vehicles until the second half of the contract it will likely to be expensive if they cannot recoup their costs over the remaining years of the contract.

Based on this feedback it is clear that the contract length would be better if it was linked to Wiltshire's commitment to be carbon neutral by 2030.

Having a contract extending beyond 2030 can ensure contractor's commitment to work alongside Wiltshire to deliver its carbon reduction targets by 2030.

A shorter contract may not provide the contractor with sufficient incentive to work towards our carbon neutral target.

Discussions with contractors have indicated that vehicles are generally replaced on a five year cycle. A ten year contract period would allow a change of vehicles after five years.

It is likely that when the contract starts in 2023 low to zero emission vehicles will still be limited to smaller vehicles rather than larger HGV's and other specialist vehicles. However with advances in technologies it is hoped that the contractor would have better options for introducing zero emission vehicles by the year five of the contract.

The Council's previous contract period for the Term Maintenance Contract has been five years with up to two years extension awarded based on performance measured through KPI's.

Anything less than this is likely to result in higher rates as the contractor requires a reasonable period over which to recoup initial outlays, spreading costs over a longer period should result in cheaper rates.

If the new contract has a duration of seven years, then it will potentially end on 31st March 2030, if not before.

Ongoing assessment of the contractor's performance throughout the contract will be used to ensure suitable levels of service are maintained. The option to terminate the contract if performance levels measured through KPI's were continuously poor would be included. These assessments will also be used to determine any contract extension.

25. Length of Contract Award recommendations

To set the initial contract period for five years with the option to extend the contract by a further five years at the end of year four, this being based on performance measured through KPI's.

Further performance monitoring through KPI's will continue throughout the duration of the contract, allowing the Client to terminate the contract as a result of continuous underperformance by the contractor as measured through KPI's.

Overview and Scrutiny Engagement

26. The report will be considered by the Financial Planning Task Group at its meeting on 7 January 2022. The Chairman and Vice-Chairman of the Environment Select Committee are also invited to that meeting and their views can be reported to Cabinet on 11 January.

Safeguarding Implications

27. None

Public Health Implications

28. The condition of Wiltshire's roads and related infrastructure can have serious safety implications.
29. 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.
30. The continued maintenance of footways and cycleways contributes to peoples' safe use and enjoyment of their environment and to their mental and physical wellbeing.

Procurement Implications

31. In order to progress the procurement of the new term highway maintenance contract procedures have started to determine the best procurement option and receive feedback from potential suppliers through market engagement in order to help determine the scope for the new contract.
32. Wiltshire's term highway consultant will also assistance in the preparation of the tender documents.
33. A steering group has set up to oversee this process. This group includes members of the procurement, legal team, consultant, and highways team.
34. The scope and details of the new contract will take into account a number of factors, including revenue funding pressures, public expectations, winter maintenance requirements, legal obligations to maintain the highways network, carbon reductions and social value.
35. A sourcing plan has been prepared and will go to the Commercial Board on 9 January (included as **Appendix 1**).

Equalities Impact of the Proposal

36. The contract activities of maintaining and improving the highway network provide benefits to all people to enable them to be able to use the highway safely, whatever category they may fall into.
37. There is no bearing of the proposal on equality

Environmental and Climate Change Considerations

38. As budgets and workloads for a new Term Highway Maintenance 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.
39. Under the new contract the contractor will be required to reduce their carbon footprint in line with Wiltshire's commitment to become carbon

neutral by 2030. The potential award of a five year contract extension would allow the contractor the ability to develop a longer term environmental plan showing how they will reduce their carbon usage past 2030. This will allow them opportunities to integrate future carbon reducing technologies in transport and manufacturing currently not available.

40. The Council's Climate Team are developing a decision wheel which will be trialled on the term highways maintenance contract. The purpose of this will be to highlight the environmental impacts of the contract and ensure the focus is on the most relevant issues.
41. The contract will require the contractor to propose a series of measures that they will put in place to demonstrate how they will reduce the carbon emissions associated with their operations during the life of the contract and evidence these reductions. These measures will be focused on the outcomes from the decision wheel. The contractor's proposals will be used as key performance indicators linked to the award of the contract extension.
42. 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 contractors in place will enable robust maintenance strategies to be implemented to deal with immediate problems and to improve the condition of the network to help build improved resilience into the infrastructure.
43. 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 will be reflected in future arrangements for the provision of these services.
44. A key aspect within the new contract, as in previous contracts, will be to ensure that the successful Contractor 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.
45. The new contract will not last longer than 20 years.

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

46. 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.
47. 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.

48. 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

49. The effects of material supplies and deliveries being experienced nationally could result in increased contract rates. Annual price adjustments linked to the BCIS Price Adjustment Formulae Indices will be included in the contract.
50. 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.
51. 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.
52. There is a risk that suppliers will not submit a tender for the new contract. A supplier engagement day undertaken on 29 November 2021 indicates a high degree of interest from a number of suppliers in this contract.

Financial Implications

53. The following table shows the Capital and Revenue spend on the current contract:

Year	Annual Spend Total (£)	Capital	Revenue
Year 1 - 2016-17	11,471,107	5,587,431	5,883,676
Year 2 - 2017-18	12,914,689	9,019,853	3,894,836
Year 3 - 2018-19	13,528,283	8,905,537	4,622,746
Year 4 - 2019-20	17,438,212	12,524,733	4,913,479
Year 5 - 2020-21	19,275,085	13,742,187	5,532,898
Year 6 - 2021-22			
Year 7 - 2022-23			
Total to date	74,627,376	49,779,741	24,847,635

54. The total average spend is £15 million per year.
55. The Revenue spend remains around £5-6 million per year.
56. The last two years has seen an increase in Capital spend through the contract of £4-5 million per year in part due to the LED replacement lighting works.

57. There has been significant capital funding for highways maintenance and improvement in recent years, and the Council continues to bid for future funding.
58. Globally, prices are increasing and the effects of Covid, Brexit, availability of supplies and the shortage of delivery drivers is impacting the highway industry and will likely result in an increase in tender rates.
59. The need to reduce our carbon footprint will also result in increases in rates as new technologies are developed and introduced.
60. These factors will have a direct impact on the amount of work that can be achieved within the available budget for the highway service.
61. The financial risks and implications will have to be reviewed when tenders for the new contract are returned and will be reported as part of the contract award process.

Legal Implications

62. The Council has a duty to maintain the highways network and related infrastructure. The appointment of a new Contractor will ensure the continued delivery of a highway maintenance service and help ensure that the Council fulfils its statutory duties and meets its obligations under the Highways Act and other legislation.
63. The appointment of a new Contractor could 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.
64. 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.

Workforce Implications

65. There are no direct workforce implications for Wiltshire Council staff of the proposed approach. The current structure and the roles undertaken by staff would continue to operate in the same way as on the current contract.
66. There are approximately 120 employees of the current Contractor who could be eligible for TUPE transfer to the successful Contractor at the end of the current contract, but this will not be directly managed by the Council.

Options Considered

67. The options are detailed in this report under Main Considerations for the Council.
68. The procurement options considered were:
- (a) Do nothing
 - (b) Insource the services necessary to undertake the Highway Maintenance Services
 - (c) Procure a framework contract
 - (d) Retender a similar contract
69. Officers recommend retendering a similar contract for a single supplier to be procured via a two stage tender process for the provision of a new term highways maintenance contract to commence on 1 April 2023..

The option for the length of contract award was also considered and a contract period of five years with the option to extend the contract by a further five years at the end of year four is recommended. This will be based on performance measured through an agreed set of Key Performance Indicators..

Conclusions

70. The conclusions are:
- (i) Re-tendering a new Term Highways Maintenance Contract is the most advantageous option without the risks and incurring initial financial outlays associated with bringing the service back inhouse.
 - (ii) This will also ensure the continuous provision of the highway maintenance service and ensure that Wiltshire Council is able to undertake its legal and statutory duties as the Highway Authority.
 - (iii) Contracting out the service will allow Wiltshire to benefit from the expertise and capacity for innovation and new technologies available in the industry and in particular with regard to reducing carbon footprint in the highway maintenance operations..
 - (iv) Awarding a contract for five years with the option to extend the contract by a further five years aligns the contract period with Wiltshire's Carbon Reduction Policy time frame.
 - (v) This enables the contractor to work alongside the Council in reducing its carbon footprint and help Wiltshire achieve its commitment to become carbon neutral by 2030.
 - (vi) A shorter contract period may not provide the contractor with sufficient incentive to work towards our carbon neutral target.

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30 November 2021.

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

None.

Appendices

Appendix 1 – Sourcing Plan.