

Divisions Affected – ALL

CABINET
17th October 2023

Future Highway Maintenance Contract Model

Report by Corporate Director for Environment and Place

RECOMMENDATION

1. The Cabinet is RECOMMENDED to

- a) Endorse the approach and proposals surrounding the new highway maintenance contract as set out in this paper.
- b) Authorise Officers to prepare and commence the procurement of a new highway maintenance contract to start on 1st April 2025 (following a mobilisation period) for 8 years with options for two 3-year extensions (14-year potential contract length).
- c) Authorise Officers to prepare for and commence the procurement for a new gritting fleet 'contract hire' arrangement in alignment with the commencement of the new highways maintenance contract which can be transferred to the new maintenance provider.
- d) Delegate the decision to the award the contracts, and any potential future contract extensions, to the Corporate Director of Environment and Place.

Executive Summary

2. Following Cabinet approval in March 2023 to procure a 'single provider' contract with use of frameworks and increased in-house capabilities, highway maintenance contract specialists, DMSQD were appointed alongside legal specialists Bevan Brittan to work with officers to develop a specification, pricing schedule and contract to go to market to procure a new maintenance contract.
3. To ensure a contract is both 'straight forward' and easily manageable, but also meeting the specific needs of Oxfordshire, industry standard contracts, specifications, and pricing schedules have been used where possible. Relevant additional clauses and amendments are included to ensure suitability to meet Oxfordshire's specific needs have been prepared.
4. To ensure the most suitable bidder is appointed, detailed evaluation themes have been developed and designed to ensure the successful bidder will both be able to provide a cost-effective and high-quality maintenance service along with supporting the council in its delivery of its' key priorities.

5. Oxfordshire County Council currently operate (via the existing highway maintenance contractor) an aging winter gritting fleet which is increasingly expensive to maintain. When the new maintenance contract commences on 1st April 2025 there is a risk the Council could be without a suitable gritting fleet due to long lead in times for replacement fleets. To manage this risk, it is proposed the Council procures a 'contract hire' agreement for a replacement fleet. It is proposed a new contract commences in Oct 2024 and runs for 9 years + 3 + 3 years (15 years in total). To also de-risk future contracts, there is a year's overlap with a future contract to ensure continuity of service.

Context

6. The existing highway maintenance contract with M-Group Infrastructure (Milestone) is set to expire on 31st March 2025. Preparation for procurement of the new contract started August 2022, with Cabinet agreeing in October 2022 to commence this process, and approved the contract model of a single provider with use of framework and greater in-house activity in March 2023.
7. To manage this project a monthly cross council officer led working group and senior officer / member steering groups have been established.
8. The current contract with Milestone allows for the delivery of the following services across Oxfordshire, it is planned that the future contract scope should also cover these key areas:
 - Routine maintenance - defects, drainage, highway grass cutting, signs, lines
 - Winter maintenance including gritting
 - Delivery of the capital maintenance/renewal schemes
 - Structures – maintenance and improvement works
 - Small new infrastructure and improvement works (below a value of approximately £750k)
 - Arboricultural service and support
 - Countryside and PROW maintenance
 - Traffic & Event Management
9. The existing winter gritting fleet is owned and operated by Milestone and is leased to Oxfordshire County Council. The fleet is approaching 13 years old, well beyond the useful economic life of a typical gritting fleet which is 8-10 years. Whilst Oxfordshire County Council has the ability, if required, to purchase the fleet from Milestone to service a new maintenance contract, this is not viewed to be either viable or desirable due to the fleets age, condition and costs associated with keeping it operational for future seasons, these combined presents a risk to the County Council's ability to fulfil its statutory winter duties. A summary of options considered can be found in Annex 1.

Procurement and specification details

10. When developing the procurement specification requirements and process, Officers looked to ensure the 'key objectives' of both the Council and the service were met. These objectives are.
 - Ensuring a 'right first time' approach to the delivery of works and schemes
 - Delivery of service within budget and ensuring value for money is realised
 - Development of a resilient Oxfordshire supply chain
 - Supporting the delivery of the Councils carbon reduction targets
 - Increasing and developing the client capability and capacity
 - Promotion of innovation and using Oxfordshire as a test bed for new initiatives
11. To make the contract both efficient to manage and to ensure its attractiveness to the industry, officers are proposing the use of industry standard specifications, pricing schedules and contract types, with the use of bespoke clauses to reflect the specific requirements for the service provision. The standard documents proposed are as follows.
 - NEC4 Term Service contract with relevant Oxfordshire specific clauses (kept to minimum possible).
 - Service specification based on the 'Specification for Highway Works' produced by 'Standards for Highways'.
 - Pricing Schedules based on standard Highway Maintenance Efficiency Programme (HMEP) schedules.
12. Whilst the use of a standard schedule of rates submitted by bidders as part of the procurement exercise is the preferred payment mechanism being proposed, it is acknowledged that for some schemes and work types alternative mechanisms, such as cost reimbursable and target, cost may be appropriate. These will be allowed and managed by exception. A comprehensive contractual pricing schedule will be developed with the technical and legal specialists appointed to support the Council.
13. It is proposed the contract has an initial duration of 8 years with the option to allow for a further 6 years through award of up to two 3-year extensions. 8 years has been deemed to be the most appropriate initial contract length as it is considered long enough to attract market interest and enables a sufficiently long 'investment' period for bidders whilst ensuring the contract remains competitive throughout its lifespan. Two extension periods were deemed to be preferable to ensure the contract extensions remain attractive and viable to the market whilst ensuring continuity of service for Oxfordshire County Council. Shorter extension periods were considered but discounted due to the resource implications of managing and their lack of attraction to providers.
14. To ensure the contract remains competitive and at the forefront of delivery and innovation throughout its life it will include a review process which will take place after 5 years of the initial period of the contract. This review will be an

opportunity for both client and provider to complete a 'deep dive' into contract performance, pricing and innovation and will help inform the Council's decision around contract extensions.

15. In addition to the core maintenance activity delivered through the contract, it is proposed that standalone highway improvement schemes, up to the value of £750K, will also be delivered through the contract. The use of benchmarking and market testing will be used to demonstrate value for money over the life of the contract for these works.
16. The contract will also include requirements for supply chain retendering to ensure best quality and value for money for high value maintenance renewal programmes such as surface dressing and inlay schemes
17. The previous tender in 2009/10 was based on a 'competitive dialogue' procurement approach due to greater ambiguity around the service required and in particular as it was a new style partnership model which was desired. There is greater clarity about what is required meaning the standard contracts, specifications and pricing mechanisms can be used as a more 'predictable' and 'typical' service is being procured. However, despite this certainty there is still the need to engage with potential providers to ensure a 'fit for purpose' and deliverable contract is procured meaning a 'competitive procedure with negotiation' procurement route is recommended.
18. This differs from earlier recommendations of a 'restricted procedure' procurement. This change in approach will ensure areas that may benefit from provider insight can be fully explored. It is expected the use of the 'competitive procedure with negotiation' will add up to 4 months onto the overall procurement process, however, given the over generous mobilisation period this does not pose a risk to project delivery and the final implementation date. This approach is also supported by industry based on their feedback from an industry engagement session which was held in July 2023 and by Bevan Brittan. The options appraisal assessing procurement routes can be found in Annex 2.
19. It is proposed a 60/40 quality and price split plus mandatory 14% social value assessment is used when evaluating bids as it is believed this demonstrates the right commitment to quality whilst ensuring costs are competitive and sustainable for the duration of the contract. The final proposed split is as follows also cover these key areas:
 - Contract quality – 52% (60% when excluding social value)
 - Contract cost – 34% (40% when excluding social value)
 - Contract delivery of social value – 14%
20. Due to the fluctuating and uncertain nature of budgets, the new contract will not commit to a minimum annual spend but will provide an indication of spend through previous spend profiles which will be shared as part of the tender documentation. With the new contract it is proposed annual inflation is applied via the BCIS index which is a construction specific index used widely across highway maintenance contracts nationally.

Proposed next steps

21. Once approval to commence procurement is given, the next stage is to issue a publication of contract notice in order to commence the formal process. It is anticipated supplier pre-qualification should be completed by March 2024 with the formal invitation to tender issued to the remaining successful candidates in April 2024.

Key programme dates

Indicative dates for maintenance contract procurement

Activity	Indicative Timeframe
Approval of approach by Cabinet	Oct 22
Investigation and development of preferred model	Oct 22 – Feb 23
Approval of preferred model by Cabinet	Mar 23
Development of contract documents including specification/s and pricing schedules	Sept 23 – Feb 24
Authorisation to procure preferred model by Cabinet	Oct 23
Selection questionnaire completion	Nov 23 – Jan 24
Initial tenders received and reviewed	Feb 24 – Mar 24
Negotiations on initial tenders completed	Apr 24
Final tenders completed, reviewed and evaluated	May 24 – Jul 24
Contract awarded	Aug 24
Mobilisation of new contract	Sept 24 – Mar 25
Service Commencement	Apr 25

Indicative dates for gritting fleet procurement

Activity	Indicative Timeframe
Development of procurement specification	Jul 23 – Sept 23
Approval to procure by Cabinet	Oct 23
Procurement published	Nov 23
Gritting fleet order placed	March 24
Contract start	Oct 24

Financial Implications

22. Due to the scale and complexity of the project external specialist delivery consultancy services are required for elements of the project. The total cost of delivery and legal consultancy costs is estimated to be £400k as agreed as part of the budget strategy as set out below. Current committed spends, as at September 2023, are c. £130k on specialist highway consultancy services and £15k on specialist legal support. A profiling exercise will be completed to determine budget adherence to annual allocation, if any funding needs to be brought forward from 24/25 into 23/24 this will be reviewed and agreed in line with council procedures.

23. In October 2022, Cabinet approved funding to address the need for additional consultancy support. An extract from the budget agreed by the Council in February 2023 demonstrating this below. A total of £400k over the 2-year project duration (2023/24, 2024/25) has been approved, after which funding will be removed from 2025/26.

Reference	Description (2022/23 Budget)	2023/24 £000	2024/25 £000	2025/26 £000	Total £000
24EP3	Additional temporary resources and expertise to support the exploration and delivery of a new highways maintenance contract from the end of March 2025	150	100	-250	0

24. There is a small risk of a potential cost pressure against this budget as levels of work unexpected and not allowed for is required. If this does occur, then it is expected any additional cost will need to be absorbed by the services baseline budgets – resulting in a reduction in ‘revenue’ maintenance work on the ground taking place or through any overachievement in income targets.

25. Due to cost pressures and uncertainty of future grants and budgets, the contract will not offer guaranteed levels of spend. As part of the procurement exercise previous years spends and volumes of works will be presented for indication but will not be committed to.

26. Regarding gritting fleets, the existing fleet is currently funded through the highway maintenance contract with Milestone. It is proposed the new fleet is funded via either the new maintenance contract or by removing the fleet from the contract and reducing the value of the contract by c.£625,000 per annum to fund the new fleet. The cost of the new fleet will also be partially offset by a decrease in winter fleet maintenance which is currently budgeted for. It is not anticipated any additional budget will be required.

27. It is anticipated the cost per annum for the fleet will be £625,000. Expected contract length is 9 years with a 3+3 extension option to coincide with the contract length of the new highway maintenance contract with an anticipated start date of 1st October 2024.

28. As the proposed contract will include maintenance it is expected the contract will provide increased certainty to highways budgets as only an agreed fixed price will be charged and can therefore be accurately budgeted for.

Comments checked by: Prem Salhan, Finance Business Partner

Legal Implications

29. The procurement of the new highway maintenance contractor, including any associated contracts, will be completed in accordance with the Public Contracts Regulations 2015 and relevant guidelines.

30. Due to the complex and very specific nature of a long-term highway maintenance contract, specialist external lawyers Bevan Brittan LLP have been appointed to advise on the contract and procurement documentation and all legal aspects of the procurement exercise and to work in conjunction with the appointed delivery consultants and the Council's internal legal advisers.
31. As the 'Highway Authority' for Oxfordshire, the procurement of a new highway maintenance contract/s is essential to ensure Oxfordshire County Council meets its obligations under section 41 of the Highways Act 1980 to maintain highways which are deemed 'maintainable at public expense'.

Comments checked by: Jayne Pringle, Principal Solicitor – Contracts & Conveyancing

Procurement Implications

32. Any procurement exercise to appoint professional services to support the project and new highway maintenance contractor/s will be completed in line with all relevant procurement policy and guidelines. Due to the scale and value of the contracts being procured a member of the procurement team has been appointed to the project team and will own the procurement elements of the project.
33. Whilst a range of procurement approaches were considered it was found to ensure a truly 'fit for purpose' and sufficiently ambitious contract is delivered some contract areas e.g. depot maintenance, winter services and response to the climate emergency would still benefit from additional negotiation. To enable this it is recommended a 'competitive procedure with negotiation' approach is taken to deliver this procurement.
34. It should be noted legislative changes to the procurement regulations are expected to come into effect in 2024, and the specific timings of the tender will need to be considered with regard to the project programme and risks.
35. Social value is at the heart of all Oxfordshire County Council procurement exercises. For procurements associated with this project, significant weighting will be placed on ensuring contracts deliver the Council's social values. These could include measures aimed at boosting local employment, use of SMEs in the wider supply chain and climate change targeted actions in line with our Social Value policy. 14% of the overall evaluation score for the contract will be based on the social value commitments each bidder makes as part of their tender submission.
36. The gritting fleet procurement will be completed in line with the Contract Procedure Rules Regulation 7 and Public Contract Regulations 2015.

Comments checked by: Melissa Sage, Head of Procurement & Contract Management

Staff Implications

37. Due to the scale and complexity of the project additional and dedicated subject matter expertise on a consultancy basis to support the delivery of the contract and its legal elements has been appointed. This is across Highways Service, Procurement and Legal.
38. The preferred model will require the TUPE of c.190 staff who currently deliver maintenance works on behalf of Oxfordshire County Council. Whilst some resource is likely to be transferred to the County Council it is expected the majority of staff transfer will be from Milestone to the new single provider.
39. The wider contract delivery project team has been internally resourced from both within the directorate and corporate centre.

Equality & Inclusion Implications

40. It is not anticipated the procurement of a new highway maintenance contract/s will impact negatively on any 'protected characteristics' groups, nor on the armed forces, carers, staff, other Council services or providers. There is an opportunity through any procurement to positively impact rural communities and areas of deprivation. A copy of the equalities impact assessment can be found in Annex 3.

Sustainability Implications

41. Any future contract will look to ensure adoption of the latest technologies, innovations, and practices to reduce carbon where possible. A Climate Impact Assessment has been completed for the proposal which shows a net benefit of +13. A copy of the Climate Impact Assessment can be found in Annex 4.
42. The new gritting fleet will use engines conforming to the latest air quality standards (Euro 6). These engines will produce c. 1/6th of the NOx and particulate emissions when compared to the existing Euro 5 fleet. It is also proposed the vehicles will run on hydrogenated vegetable oil which offers reduced carbon emissions when compared to diesel. This actively supports the Councils 'net zero' ambitions.

It is proposed the future contract will include the replacement of the fleet at least once during the contract lifespan to ensure both the latest technologies and fuels can be used at the appropriate time and to ensure the fleet remains in a serviceable condition. If the provider does not look to upgrade fleet with latest technologies, the County Council retains the right not to extend the contract.

Risk Management

43. The procurement of a new highway maintenance contract/s offers many opportunities for Oxfordshire County Council by ensuring any selected model is appropriate for the current and perceived future challenges for the council.

44. Failure to award a new contract/s holds significant risk for this project, failure to do so by 31st March 2025 will potentially leave Oxfordshire County Council without a highway maintenance contractor to fulfil our maintenance obligations. To minimise this risk the project has been established well in advance of this date to enable a robust assessment and procurement process to take place.
45. A detailed risk and issue log has been developed and is being actively managed by the officer led working group. Key risks will be escalated to the steering group and added to the corporate register where required. The three most significant risks to the contract currently are ensuring the availability of a fit for purpose gritting fleet for the start of the new contract, ensuring sufficient interest in the contract to secure competitive bids and ensuring full key staff availability throughout the duration of the project. Each of these risks are actively reviewed and managed by the projects working group on a monthly basis with risk owners assigned and plans in place to mitigate.
46. To ensure the suitability of the contract, specification and pricing schedule, an industry event was held on 20th July 2023. The purpose of this session was to ensure the proposals are realistic and manageable from an industry perspective whilst recognising and delivering against the Councils ambitions. Based on the feedback from the session Officers have revised the approach to the procurement, moving from a 'restricted' procurement procedure to a 'competitive procedure with negotiation' to allow for further discussion and engagement between the Council and potential bidders and raised the initial value of 'small new infrastructure and improvement works' from £500k as advised in earlier papers to £750k to reflect the impact of recent inflation on what could reasonably be delivered as a 'small' scheme.

Corporate Policy and commitment to LTCP

47. When developing the new contract, specification and pricing schedule, officers have looked to link their work and recommendations back to ensuring corporate policy is delivered, similarly where it is found proposals could better meet corporate policy, the proposals have been amended, where operationally viable, to ensure this happens. Examples of this include ensuring sustainability and the response to the climate emergency is at the forefront of any bid received and ensuring the key outcomes of both the Highway Asset Management Plan, Strategic Plan as well as considering other key priorities.
48. The development work has also paid particular attention to the Local Transport and Connectivity Plan (LTCP). The new contract looks to support the LTCP through mandating any new provider to delivering a 5-year plan (up to 2030) to supporting carbon neutrality. Similarly, responding to the need to encourage healthy lifestyles and promote active travel the contract will look to place the delivery of active travel as a core element of delivery. To support 'Vision Zero' this contract will be the mechanism by which a significant proportion of improvement works will be delivered. To ensure productivity benefits and the development of the local economy the evaluation of the new contract will incentivise the use of local supply chain partners and the use of apprenticeships. A key focus of the new contract will also be around the adoption and trials of new

industry innovations where applicable to Oxfordshire. It is expected the use of new technologies should both help ensure value for money and improving delivery timescales for works enabling enhanced connectivity and mobility options throughout the county and reducing economic impacts related to durations of highway maintenance works.

BILL COTTON

CORPORATE DIRECTOR FOR ENVIRONMENT AND PLACE

Annexes:

- Annex 1 – Gritting fleet options and recommendation
- Annex 2 – Procurement Approach options
- Annex 3 – Equality and Inclusion Impact Assessment
- Annex 4 – Climate Impact Assessment

Background papers: None

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