

Request for Decision on the Novation of The Skanska Highways Term Maintenance Contract

TO: Jason Russell, Corporate Director, Communities

FROM: Jeremy Richards, Interim Head of Procurement and Contract Management

Summary

1. This request seeks a decision on the novation of the Council's Highways Term Maintenance Contract from Skanska Infrastructure (Skanska), to Milestone Infrastructure Limited (MIL).
2. There are no additional financial implications relating to this request, and no substantial modifications to the existing contract, including duration.

Background

3. The County Council was informed in February 2020 the intention of Skanska to sell the highway part of its business. In early December 2020 the Council were informed the preferred bidder was M-Group Services Ltd (of which MIL is a subsidiary). The intention is to complete the sale by end March 2021, tying in with the start of the new financial year.
4. Due diligence on the new company and potential contract transfer options have been undertaken. Specialist legal advice from Trowers & Hamlin has been procured to support this.
5. The sale impacts on the highways term maintenance contract and three major infrastructure delivery contracts procured through the Peterborough framework.
6. There is no substantial change in contract, service provision or budget spend as part of the sale.

Form of Transfer

7. The previous transfer of the contract from Atkins to Skanska in 2013 was delivered under an assignment transfer. The Public Contract Regulations 2015 specifically consider and allow for a novation under the circumstances currently faced. It has been confirmed by Trowers and Hamlin that a novation is legally acceptable form of contract.
8. Novation enables ties with the original provider, Atkins, to be completely removed, providing greater flexibility from, and stronger partnership with, the new provider.

9. The form of novation which has been agreed with Skanska means that all liabilities for work undertaken will rest with MIL, and make for a far clearer form of contractual relationship.
10. Whilst the proposed novation of the contract has been assessed by external legal advisors, and has been deemed to be a legally compliant contracting vehicle, an indemnity has been secured with Skanska, indemnifying the Council against any claims brought by a third party in relation to this process.

Due Dilligence

11. The due diligence process has been completed, and a separate report is attached at Appendix 1.
12. MIL have completed the original PQQ, which formed part of the original tender process in 2008, resulting in the original contract being awarded to Atkins.
13. The PQQ has been evaluated by a team similar to that which formed the original evaluation panel.
14. As can be seen in Appendix 1, MIL have passed the qualitative aspects PQQ process, with all 'Pass/Fail' questions being rated as a 'Pass', and achievement of an overall score of 80.55%. The financial assessment of MIL has been completed by the Finance Business Partner, and resulted in MIL not passing the element of the PQQ. However, the accounts of M Group Services Ltd have been scrutinised, and will be providing the Parent Company Guarantee which has been requested. On this basis. The financial element of the PQQ has also been assessed as a pass.
15. The MIL score exceeds Atkins score in the original PQQ, which was 76.73%, and means MIL would have been shortlisted to be invited to tender.
16. As a result of this, and with the additional and comprehensive due diligence checks being completed, it is deemed that MIL, the proposed contracting entity, are a suitably qualified supplier of these services to the Council.

Legal and Financial Appraisals

Legal and Financial appraisals are attached to this Report

Recommendation

The Corporate Director, Communities, is recommended to approve the novation of the contract from Skanska to Milestone Infrastructure Limited.

Jeremy Richards

Interim Head of Procurement and Contract Management

12 March 2021

Request for Decision on the Novation of The Skanska Highways Term Maintenance Contract.

Legal Appraisal by Director of Law and Governance

A. Background

1. The County Council was informed in February 2020 the intention of Skanska to sell the highway part of its business. In early December 2020 the Council were informed the preferred bidder was M-Group Services Ltd (of which MIL is a subsidiary). The intention is to complete the sale by end March 2021, tying in with the start of the new financial year.
2. Due diligence on the new company and potential contract transfer options have been undertaken. Specialist legal advice from Trowers & Hamlin has been procured to support this.
3. The sale impacts on the highways term maintenance contract and three major infrastructure delivery contracts procured through the Peterborough framework.
4. There is no substantial change in contract, service provision or budget spend as part of the proposed novation of the contract from Skanska to MIL.

B. Appraisal

5. The proposed novation has been subject to a high level of legal scrutiny, with external legal support secured through Trowers and Hamlin.
6. The legal support has focussed on both the legality of the proposed novation of the contract, as well as support in drafting the novation agreement, and supporting documents.
7. In light of the Public Contract Regulations (2015), and the fact that the specific scenario covered in the Skanska sale to MIL, is covered at 72(1)(d) of the Regulations, the Council is content that the novation of the contract is legally acceptable. This decision is supported by expert legal advice provided by Trowers and Hamlin.

C. Recommendation

In light of the information in this report prepared by the Interim Head of Procurement and Contract Management, the Director of Law and Governance recommends that the request to novate the Council's Highways Term Maintenance Contract from Skanska to MIL is approved by the Corporate Director, Communities.

Anita Bradley
Director of Law and Governance and Monitoring Officer
14 March 2021.

Request for Decision on the Novation of The Skanska Highways Term Maintenance Contract.

Financial Appraisal by Rob Finlayson, Finance Business Partner, (Concluded by Ian Dyson, Assistant Director of Finance).

A. Background

1. The County Council was informed in February 2020 the intention of Skanska to sell the highway part of its business. In early December 2020 the Council were informed the preferred bidder was M-Group Services Ltd (of which MIL is a subsidiary). The intention is to complete the sale by end March 2021, tying in with the start of the new financial year.
2. Due diligence on the new company and potential contract transfer options have been undertaken. Specialist legal advice from Trowers & Hamlin has been procured to support this.
3. The sale impacts on the highways term maintenance contract and three major infrastructure delivery contracts procured through the Peterborough framework.
4. There is no substantial change in contract, service provision or budget spend as part of the proposed novation of the contract from Skanska to MIL.

B. Appraisal

5. The proposed novation of the contract from Skanska to MIL has no impact on the duration of contract or likely spend, as all terms, obligations and liabilities within the original Atkins contract have effectively been transferred to the replacement contractor via the Novation Agreement. The anticipated spend both in terms of capital and revenue, through the term of this agreement are afforded through the currently agreed budgets agreed for the medium term, as part of the councils Budget Strategy process.
6. MIL did not pass any financial assessment, and would have failed the PQQ. The financial structure of MIL is limited to a £1 capital share, and the failure of any assessment is due to the current lack of substance of the company, rather than poor financial performance. M Group Services Limited have passed all financial assessments required, including passing the assessment of the original PQQ and as the grandparent company, a parent company guarantee has been secured with M Group Services Limited, to support the financial stability and assurance required
7. There are no known financial risks associated with transfer and Novation Agreement which includes a requirement to enter into an Admission Agreement to the Local Government Pension Scheme. That agreement is not yet in place but it has been confirmed with Legal Services this can be concluded after the

transfer date with no financial risk to the Council. It has also been confirmed there are no TUPE implications for the Council.

C. Recommendation

In light of the information in this report prepared by the Interim Head of Procurement and Contract Management, the Director of Finance recommends that the request to novate the Council's Highways Term Maintenance Contract from Skanska to MIL is approved by the Corporate Director, Communities.

Ian Dyson, Assistant Director of Finance
On behalf of

Lorna Baxter
Director of Finance
30 March 2021.