

Sustainable Communities Overview and Scrutiny Panel

7 September 2016

Wards:	All
Subject:	Options Analysis Report for the re-procurement of the Highway Works and Services Term Contract
Lead Officers	Chris Lee (Director of Environment and Regeneration); James McGinlay (Head of Sustainable Communities)
Lead Member	Councillor Martin Whelton – Cabinet Member for Regeneration, Environment and Housing
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Recommendation:

That Members note the content of this Report and provide comments on the preferred option to continue to deliver planned and reactive highway works from 1 September 2017.

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To inform Members of the potential options available to the Council to continue to deliver planned and reactive highway works from 1 September 2017.
- 1.2. This report recommends that an extension of up to two years is awarded to the current term contractor, F M Conway, from 1 September 2017.
- 1.3. The existing contract continues to provide value for money and delaying the re-procurement in favour of a contract extension maintains continuity as the council delivers on-going public realm regeneration work in Mitcham through to 2018.

2 DETAILS

- 2.1. The Council's current Highway Works and Services Term Contract was awarded to F M Conway Ltd for a five-year term from 1 September 2012 to 31 August 2017. The terms and conditions of this contract allow for the contract to be extended for up to a further two years until 31 August 2019.

3 ALTERNATIVE OPTIONS

- 3.1. Three options are available to the council to consider:

- Extend the current contract for a period of up to two years to 31 August 2019;
- Fully re-procure the Highway Works and Services Term Contract, which would need to commence immediately, with the award of a new contract on 1 September 2017; or
- Form a call-off contract to deliver planned and reactive highway works through LoHAC (London Highways Alliance Contract), led by TfL.

Extension to the current Term Contract

- 3.2. Extending the existing Term Contract for up to two years, as allowed under the current Terms and Conditions of the Contract, is the most expedient and economically advantageous approach to continue to deliver planned and reactive highway works from 1 September 2017.
- 3.3. There are currently a number of major projects being delivered through the Term Contract, which will extend beyond September 2017. Therefore, a two-year extension will provide continuity and a seamless approach in delivering these projects to completion.
- 3.4. F M Conway has been the Council's highway term contractor since 1979 and over this period has developed a very successful, strong and fairly unique working relationship with Merton. This is complemented by providing a dedicated Contracts Manager who is co-located with Merton's Client team. F M Conway considers Merton as their flagship borough.
- 3.5. They have many years of proven working experience in the borough and there are over 30 Merton residents employed on the Contract.
- 3.6. They have successfully delivered cost saving initiatives totalling some £160,000 during the current life of the Term Contract – 2012 to 2016.
- 3.7. F M Conway's overall performance against the existing contract has been strong and all monthly targets are met or exceeded as outlined in Section 4 below. They demonstrate a positive approach to health and safety and have good systems in place to deal with any specific issues. They are also very proactive in meeting Client changes and responding in a timely manner.
- 3.8. They are very keen to continue working with Merton and have stated that they will work closely with us to identify suitable opportunities that support and aid Merton's ambition to be London's Best Council by 2020.
- 3.9. F M Conway have just been successful in winning the Street Lighting Maintenance and Improvement Works Term Contract from 1 October 2016 to 31 March 2022 and we have been talking to them about the possible benefits, synergies and savings this could bring should the contract be extended.

- 3.10. Officers are also currently discussing options with F M Conway to secure efficiency and cashable savings over the possible two-year extension period should this be recommended.
- 3.11. Please refer to the attached Appendix – Merton Efficiencies 2017 Extension Proposal – which has been produced by F M Conway in support of the proposed extension.

Re-procure a new Term Contract

- 3.12. The re-procurement of a new Term Contract will require the appointment of an external consultant as there is no experience or capacity to deliver this in-house. The mobilisation and re-procurement exercise would need to commence imminently as significant input will be required from the Capital Project and Procurement Boards.
- 3.13. As outlined in 3.3 above there are currently a number of major projects being delivered through the Term Contract, which will extend beyond September 2017. Therefore, a two-year extension will provide continuity and a seamless approach in delivering these projects to completion.
- 3.14. As part of the re-procurement options, officers have looked at options to share procurement with neighbouring Boroughs but there are no opportunities to collaborate due to the following reasons:
- Sutton and Kingston are now operating a shared Highways and Transport service and have contracts in place to deliver services;
 - Croydon has recently extended their Term Contract with Kier for three years until October 2018 and are currently looking at options for renewal;
 - Lambeth's Term Contractor is F M Conway and this contract is due to expire in March 2017. However, they are looking to extend this for a further year until April 2018 to consider options to re-tender, including a possible Direct Labour Organisation (DLO) bid;
 - Wandsworth have delivered their highway services in-house for many years through a DLO although F M Conway are contracted to undertake some of their planned resurfacing work. The current Contract is due to expire in summer 2018 but this could be extended for a further year to consider options for a joint procurement with Richmond now they have merged services. F M Conway is currently the Term Contractor for Richmond.
- 3.15. In the event of a contract extension, officers will consider further opportunities to work with other local authorities wherever practical.

LoHAC (London Highways Alliance Contract)

- 3.16. There is an option to form a call-off contract to deliver planned and reactive highway works through LoHAC, led by TfL. However, this is not

recommended as there are concerns over the capacity of the contractor to supply sufficient resource to deliver services at the tendered rates; this is an on-going concern for R B Kingston who use LoHAC to deliver their planned and reactive highway works. Merton and TfL have also had unsatisfactory performance issues from LoHAC on the Colliers Wood public realm project.

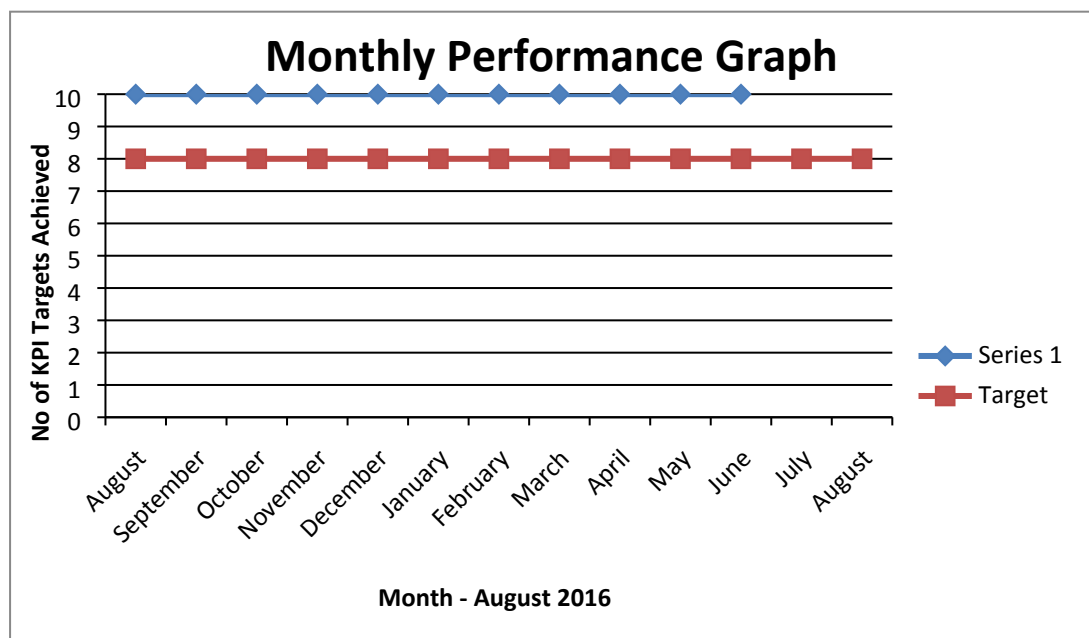
- 3.17. As this is a pan-London contract, it requires a more generic way of working and therefore the specification within the contract is somewhat different to many boroughs' standard specifications. Should Merton decide to call-off works through LoHAC we would have to engage with TfL and Kier on certain variations to the standard specification before the contract could commence. This is likely to be a lengthy and complex process.
- 3.18. It is too early in the life of LoHAC to fully determine the outputs, value and quality of this option. If the F M Conway contract extension is agreed, officers will continue to monitor and consider LoHAC as an appropriate method in the contract re-procurement for 2019.
- 3.19. A large, centrally managed, TfL-led contract may not be responsive to the needs of Merton. This is a vitally important issue, as the Council seeks to set high standards of customer care and, increasingly, to focus on responding quickly and efficiently to its residents' needs.
- 3.20. Independent soft market testing has identified that better value and quality can be obtained by extending existing contracts and re-procuring new contracts than using LoHAC. The reasons for this are given below and include:
- Avoidance of an extra tier of bureaucracy and cost that the 'managing company' structure of LoHAC brings;
 - LoHAC has been strategically priced and therefore looks relatively cheap but the complex schedule of rates allows for manipulation of final accounts;
 - Boroughs are second priority to TfL in LoHAC. Outside LoHAC, boroughs get better service with respect to emotive elements such as winter service and emergency call-outs; and
 - Evidence of individual project tenders being 12-14% cheaper than LoHAC when compared like for like.

4 CONTRACT PERFORMANCE

- 4.1. There are ten core KPIs (Key Performance Indicators) within the contract and these are monitored at the Monthly Contract Meetings. The rolling 12-month average performance figures for each KPI are given below:

KPI	Description	Target (%)	Actual (%)
1	The timely submission of a clear, concise and accurate report for KPIs each month, including supporting data in an agreed format.	100	100
2	The tonnage of material excavated that is diverted from landfill, divided by the total tonnage that is excavated.	100	100
3	Number of invoices submitted that are factually correct and submitted within two weeks of completion of work.	95	96
4	Number of jobs where no damage occurred to statutory undertakers' apparatus.	97	100
5	Number of jobs completed where no complaints or third party claims against the contractor are received.	97	100
6	Number of jobs completed where no NRSWA/Permit Fixed Penalty Notices were issued against the Contractor.	95	98
7	Number of Emergency Call Outs attended to within stipulated time.	100	100
8	Number of reactive repairs completed within stipulated time.	90	91
9	Number of planned projects completed within stipulated time.	95	99
10	Number of estimates prepared by the Contractor, found to be within 10% of the final cost of the work.	90	99

4.2. The Monthly Performance Graph for the number of KPIs met or exceeded from August 2015 to June 2016 is given below:



5 RECOMMENDATION

5.1. Members are requested to consider the information provided in Sections 3 and 4 of this report and provide their comments on the options to continue to deliver planned and reactive highway works from 1 September 2017.

6 CONSULTATION UNDERTAKEN OR PROPOSED

- 6.1. A report recommending a two-year extension to the current Highway Works and Services Term Contract with F M Conway is going to Cabinet for agreement on 19 September 2016.
- 6.2. Officers will incorporate comments from the Sustainable Communities Overview and Scrutiny Panel into the Cabinet report.

7 TIMETABLE

- 7.1. If a two-year extension was awarded we would need to inform F M Conway of this decision no later than six months prior to the expiry of the original contract. This would need to be done by 1 March 2017.
- 7.2. If it is decided not to extend the existing contract, depending upon its recommended course of action, the Council will need to mobilise and commence a full procurement exercise as both of the alternative options available involve a high element of cost and procurement with input from capital Project Board and Procurement Board.

8 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 8.1. The cost of procuring a new Highway Works and Services Term Contract will require the appointment of an external Consultant and is estimated to cost £80,000. This would need to be met from specific growth provision from revenue budgets.

9 LEGAL AND STATUTORY IMPLICATIONS

- 9.1. As the responsible highway authority, Merton has a duty to maintain highways maintainable at the public expense under Section 41 of the Highways Act 1980.
- 9.2. Under the Terms and Conditions of the current Term Contract, the Council has the discretion to extend the Contract for an additional two years.

10 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 10.1. The effective maintenance and improvement of the adopted highway network in the borough is essential to meet our statutory duty to maintain a safe environment for residents, businesses and users of the network. This is especially important for disadvantaged groups such as those with mobility difficulties and the elderly.

11 CRIME AND DISORDER IMPLICATIONS

- 11.1. Section 17 of the Crime and Disorder Act 1998 requires all Local Authorities to consider crime and disorder while exercising their duties. The design of

highway improvements and maintenance on existing roads complies with nationally agreed Codes of Practice and Design Guides and assists with delivering the Council's ambitions of "A Safe and Secure place to Live" and contributes to the objectives of the Thematic Partnerships contained in the Community Plan 2009-19 namely the Sustainable Communities and the Stronger Communities strategic themes.

12 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 12.1. Effective maintenance and improvement of the Highway Network will minimise insurance or injury risks to the Council by ensuring that the public highway is safe and serviceable.
- 12.1. Insurance levels set out in the contract requirements have been assessed by the Council's Risk and Insurance team and have been deemed to be of an acceptable level.

13 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Merton Efficiencies – 2017 Extension Proposal

14 BACKGROUND PAPERS

- 14.1. None.

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