

	Decision for Cabinet Member for Environment
	Report from the Corporate Director Resident Services
APPROVAL TO WAIVE CONTRACT STANDING ORDERS TO PERMIT PROCUREMENT OF HIGHWAYS WORKS THROUGH A DIRECT AWARD	

Wards Affected:	All
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One Appendix A - 2022/23 LIP/S106 Construction Works Programme
Background Papers:	N/A
Contact Officer(s): (Name, Title, Contact Details)	Tony Kennedy Head of Highways Management Tony.Kennedy@brent.gov.uk 020 8937 5151 Chris Whyte Operational Director Environmental Services chris.whyte@brent.gov.uk 0208 937 5342

1. Purpose of the Report

- 1.1 This report concerns the procurement of Highways Works. TfL have allocated circa £1.235m for our 2022/2023 LIP programme. The existing term maintenance contractor have indicated they will not be able to resource delivery of the schemes, and there is a risk that TfL will reclaim the funding allocated if the schemes are not substantially completed by 31st March 2023.
- 1.2 The purpose of this report is to seek member approval to waive Contract Standing Orders to enable a direct award of a contract for highways works to O'Hara Bros. Surfacing Limited ("O'Hara Bros."), who have indicated they will be

able to deliver certain key scheme works. The case for direct award, as opposed to a full tender process, is set out in the detail below.

2.0 Recommendation(s)

That the Cabinet Member for Environment having consulted with the Leader:

- 2.1. Approves an exemption pursuant to Contract Standing Order 84(a) of the requirement to tender a contract for Highways Works under the Transport for London funded Local Implementation Plan programme for a period of three months in accordance with paragraph 13 of Part 3 of the Constitution.

3.0 Detail

- 3.1 The Highways Management Service implements highway improvement schemes using the existing Highways term contract with FM Conway, including schemes under the Transport for London (“TfL”) funded Local Implementation Plan (“LIP”) programme.
- 3.2 FM Conway have been issued drawings and estimates have been requested for implementation of the LIP programme, with some of these requests made a number of weeks ago. However, FM Conway have not provided estimates and have also recently indicated that they will not be able to resource delivery of any schemes.
- 3.3 TfL confirmed funding for Brent’s 2022/2023 LIP programme following negotiations with the Department for Transport (“DfT”) on 27th September 2022. Funding for this year was significantly reduced; Brent was allocated circa £1.235m where its pre-covid LIP allocation was circa £2.245m (not including discretionary funding for bus priority). The funding was made available in two stages, an initial £0.229m to June 2022, with a further £1.006m in September 2022 for the remainder of the financial year. The funding is utilised for the delivery of various transport schemes and initiatives throughout the year, including; staff costs, surveys and studies, cycle training, cycle parking, promoting safer and healthier travel, school travel plans and parking management schemes.
- 3.4 The value of the outstanding works in the programme is estimated at circa £0.43m and comprises mainly of schemes that were included in a previous programme, had been designed and consulted upon, and are now ready to implement.
- 3.5 TfL also advised the Council on 19th October 2022 that carry forwards of funding under the LIP programme are not guaranteed and would be subject to DfT approval, asking that we identify any slippage by 28th October 2022. At this time, no issues with delivery were envisaged.

- 3.6 FM Conway were provided with our LIP programme in early November 2022, along with scheme plans. Detailed construction plans were later provided for all schemes.
- 3.7 If schemes are not substantially complete by 31st March, there is a risk that TfL will reclaim the funding allocated.
- 3.8 In consideration of these risks, and the lack of response from FM Conways, a meeting of Council Officers was held , attended by Legal and Procurement who advised that given the proposed value of the contract (less than £500k) and the urgency of the requirement, it would not be classed and a key decision and it would be permissible to direct award a contract for the delivery of the LIP programme.
- 3.9 Discussions have been held with O'Hara Bros., a contractor that was successful in the recent tendering of the Highways Contracts. They have advised that they are willing to undertake the work and can allocate resources to meet Brent's required LIP programme. The rates applied will be those that were submitted in the new Highways contract, which commences on 1st April 2023. Attached as Appendix A is the LIP programme and schemes.
- 3.10 Note for the Wembley Park Drive / Wembley Hill Road / Park Lane junction Safety Scheme, the LIP funding will be used to pre-order the signals equipment. The construction works can therefore be programmed for next year (2023/24) and is taken out of the direct award programme so it can be allocated to the new term contractor once the contract is live.
- 3.11 It is therefore recommended that the Cabinet Lead Member approves the exemption pursuant to Contract Standing Order 84(a) of the requirement to tender a contract for Highways Works for a period of three months in accordance with paragraph 13 of Part 3 of the Constitution thereby permitting the direct award to O'Hara Bros for the delivery of the LIP programme subject to Officer approval.

4.0 Financial Implications

- 4.1 All expenditure proposed is within existing budgets. If schemes are not substantially complete by 31st March, there is a risk that TfL will reclaim the funding allocated.

5.0 Legal Implications

- 5.1 In accordance with paragraph 13 of Part 3 of Brent's Constitution, the Leader has delegated certain functions to Cabinet members to be exercised within their portfolio area in consultation with the Leader. This delegation includes agreement of waivers of Contract Standing Orders for Medium and High Value Contracts.

- 5.2 The works Officers are proposing to procure are valued at less than £500k over the contract term and the proposed contract is thus classified as a Medium Value Contract under Contract Standing Orders. Contract Standing Orders provide that a Medium Value Contract should be procured by way of a tender process but for the reasons detailed in the body of the report, Officers do not consider it is possible to procure the contract by way of a tender process.
- 5.3 The value of the works Officers are proposing to procure is below the Public Contracts Regulations 2015 threshold of £5,336,937 for works. It is not considered that the works would be of cross border interest. In the circumstances, should the Council award a contract directly, there is not considered to be a breach of domestic law or the Council's own procedures
- 5.4 In reaching any decision to waive Contract Standing Orders, the Cabinet Member in consultation with the Leader should have regard to the reasons Officers have set out in Section 3 of the report.
- 5.5 Officers are mobilising the works to be substantially completed by 31st March 2023 and fully completed by 31st April 2023 to ensure the Council fulfils TfL's requirements in relation to the LIP programme. To enable the Council to facilitate the above officers are proposing to enter into a provisional comfort letter with O'Hara Bros. to document that the parties have agreed Heads of Term for the works in principle before entering into the main works contract. The Council's Legal officers will draft the abovementioned comfort letter and it will be duly signed by authorised representatives of both parties once agreed.

6.0 Equality Implications

- 6.1 Pursuant to s149 Equality Act 2010 (the "Public Sector Equality Duty"), the Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,
- 6.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising

disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

- 6.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 6.5 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.”

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Consultation has taken place with the Leader of the Council and the Cabinet Lead for Environment to report the issue and option to ensure schemes can be delivered this financial year. Ward Members and stakeholders were consulted on all the improvement schemes included in the programme.

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from the procurement of the contract
- 8.2 There are no property or accommodation implications

Report sign off:

PETER GADSDON
Corporate Director,
Resident Services