



**Executive
19 September 2011**

**Report from the Director of Environment
and Neighbourhood Services**

**Wards Affected:
ALL**

**Authority to award Highways Maintenance Framework
Agreements**

1.0 *Summary*

1.1 This report considers the contractual situation regarding the Council's management of Highways Maintenance. It proposes an effective seven month extension of the existing arrangements in order to maximise potential benefits from the emerging collaborative contract procurement across London and accordingly requests authority to award framework agreements as required by Contract Standing Order No 88.

2.0 *Recommendations*

2.1 The Executive notes the contents of this report which identifies opportunities for collaborative procurement and improved service provision in the future.

2.2 The Executive agree to an exemption from standing orders for the procurement of interim Highway Maintenance Framework Agreements on the basis of good operational reasons as set out in Section 3 of this report and approves the establishment of these Framework Agreements as listed in paragraph 3.2

2.3 The Executive approve the appointment to the Highways Maintenance Framework Agreements of the contractors listed in Appendix 1 from 1st August 2012 until 31st March 2013.

3.0 *Detail*

The current contractual arrangements for Highways Maintenance Works

- 3.1 The Council spends between £7-8M a year on highways works across the borough, a significant proportion of which is funded by Transport for London, and from the Council's own capital programme and some from the Council's revenue budget. This is a fluctuating budget, and covers a wide range of works, from significant investments in junctions to minor repairs of tarmac.
- 3.2 At present the Council is not in any collaboration to deliver this work. In 2008, the Council let framework agreements for the following activities:
- Cold planing and carriageway resurfacing
 - Hand laid bituminous surfacing
 - Paving and repairs
 - Anti-skid road surfacing (high friction coating)
 - Street furniture painting and repairs
 - Line markings
- 3.3 European legislation permits the award of either a single contractor framework or a multi-contractor framework which must, where possible, have a minimum of 3 contractors on it. The framework agreements let in 2008 are all multi-supplier framework agreements with 3 contractors appointed to each framework. The multi-contractor framework agreements mitigate the risk of not being able to resource labour to meet the required outputs.
- 3.4 In procuring the framework agreements in 2008, at the contract evaluation stage, the contractor offering the best value for money was determined for each framework, not only overall but also for each type of work delivered within the framework. As such the Council contracts with different contractors under the framework agreements depending on the nature of the works or services required.
- 3.5 The appointed contractors are used to deliver work ranging from minor responsive maintenance repairs to carriageway resurfacing, pavement upgrades, traffic schemes, CPZs and town centre improvements. Selection of contractors to deliver these defined works has been in accordance with the best value evaluation detailed in paragraph 3.4 although a mini-competition is held between contractors on the framework where elements of the work are outside the scope of the contract, to ensure best value for money.
- 3.6 The framework agreements commenced in August 2008 for a period of 3 years with an option to extend for a further year. The contractors have performed satisfactorily with no claims and disputes. Only one supplier has dropped out of frameworks 4 & 5 as they were unable to continue to commit to the contracted rates. Following meetings with contractors to discuss further efficiencies (resulting in potential savings in the region of 2% p.a.) and an evaluation of whether the framework agreements still provide value for money

in today's market, they were extended in accordance with the provisions of the framework agreement by a further one year and are due to expire at the end of July 2012. They cannot be further extended under EU legislation, which prohibits frameworks running for longer than four years.

- 3.7 Given existing framework agreements cannot be extended, Officers have been looking into future options for the delivery of highways maintenance service in Brent following their expiry. Officers have been reviewing other procurement approaches in London and sub-regionally.

London-wide context

- 3.8 The London Technical Advisory Group (LoTAG), London Councils and Capital Ambition, London's Regional Improvement and Efficiency Partnership (RIEP) have set up a working group to look at potential models for Pan-London efficiency savings for the delivery and procurement of highway works. The Transforming London's Highway Management working group has been set up focussing on three main areas; Governance and Collaboration, Standardisation and Culture Change with work streams including, common specifications and contract conditions, Supplier Relationship Development, Highway Systems Collaboration, and E-Auctions.
- 3.9 The work programme is heavily influenced by Transport for London (TfL) requirements to implement a new contractual regime for their 580km road network on red routes and 2500 road structures such as bridges and tunnels. The London-wide contractual arrangement will be in place for 2013. Because of logistics and the potential high value of these contracts, there will be 4 regional contracts in London, North West, North East, Central and South. The scope will include 24 service areas ranging from public lighting to bridge inspections, and ongoing participation in this project will ensure that Brent's procurement strategy is informed by the London-wide opportunities.
- 3.10 Over recent months, highways works have been the subject of intense examination for potential collaboration between authorities. The pan-London approach has two main elements of interest to Brent:
- The '*common specification*' for works which aims to resolve the many minor differences between specifications and intervention levels (e.g. the type of road and pavement construction and materials used or the depth at which a pothole should be fixed) which can result in significant differences in costs
 - The contract structure, and in particular whether Brent could 'call off' work as from a framework without committing in advance to volumes or values of work over the contract life
- 3.11 This work is still ongoing. There is considerable liaison with the boroughs, and Brent specifically through:

- The Transforming London's Highways Management project outlined above, which brings together all the boroughs, TfL, Capital Ambition and London Councils, specifically to maximise procurement benefits.
 - Officer meetings with TfL involving both highways and procurement specialists
 - Discussions with the London Technical Advisors Group (LoTAG), on which Brent is well represented
- 3.12 Brent has participated in these discussions and remains actively interested in the opportunities they may represent. In particular, developing a common specification for highways works in London could improve costs by reducing process costs (for both clients and contractors) and reduce risks from lack of clarity.
- 3.13 However, there are perceived risks and definite difficulties in simply joining the TfL contract structure:
- The timing is not aligned with Brent, as the TfL arrangements will not begin until seven months after the current frameworks expire.
 - It is not clear exactly how the contracts will work, and what the terms of any call-off would be
 - The TfL contractual arrangements will be very large, within which any individual borough will be a minor player, with consequent risks of poorer service and unrealisable savings
 - The common specification will not be completed until September / October 2011 at the earliest.
- 3.14 Thus, although the TfL work is of great importance and needs to be acknowledged in the borough's contract strategy, it should not be a dictating factor.

Sub regional context

- 3.15 Officers have explored with WLA colleagues the opportunities for collaborative procurement on highways. These have so far proved to be limited, with only LB Harrow being in a position (in terms of contract alignment and strategic direction) for potential collaboration. Harrow is about to go to market for an envisaged single supplier contract (as compared to the framework arrangements currently in place in Brent), which is due to commence in April 2012.
- 3.16 Brent expressed an interest in being able to access this contract where it would offer improved value for money. This might apply in certain specific instances (e.g. bridge inspections), and be relevant more broadly depending on the specific market offer. However, it should be noted that
- Brent has had limited opportunity to feed into the specification
 - It is impossible in the time available to properly evaluate the potential benefits to Brent, and therefore

- It is inappropriate for Brent to commit to buying specific volumes or values of work off this contract in advance of its procurement or Brent's own options analysis.
- Direct access arrangements to the contract, with Harrow acting as the central purchasing body (CPB), would need to be determined as there are implications in terms of legal structure.

As a result of the issues above, Harrow decided at the beginning of August that they did not wish Brent to be involved in this procurement, but to operate independently. Officers will continue to monitor developments to make the most of opportunities as they arise.

3.17 The Procurement Officers group at WLA has also recently begun to look at Highways procurement to see if other opportunities arise. Brent officers are keen to participate in these discussions, from both highways and procurement, but remain committed to promoting the common specification as a central plank of achieving potential economies of scale savings.

3.18 There are therefore no immediate opportunities to enter into wholesale collaborative procurement of highways maintenance services at a sub-regional level. Officers will however continue to monitor developments to make the most of opportunities as they arise.

Issues of specification and scope

3.19 As identified, within the core work of highways maintenance, there are significant variations in specification. Some of these are visible and can be locally controversial, such as the quality of materials or the speed of pothole repair. Others are much less obvious but can have major cost implications, for example the index used to manage price fluctuations affected by the increasing costs of materials. The Brent highway contracts use the RPI for price adjustments, rather than ROADCON or TPI, which have been higher in recent years. Boroughs also use different contract conditions, usually either NEC or ICE standard conditions. Successful collaborative procurement will rely on transparency and shared understanding of such issues, which takes a great deal of time and effort to achieve, which is why officers have been supporting the move to the common specification.

3.20 In addition there are questions of scope of contractual arrangements. To give some pointers as to the questions which are being considered by other boroughs and contractors in the market, the following table gives examples of services which might be managed in different ways:

Example service	Brent position	Comments and alternatives
Gulley cleaning	In house	Can be contracted either as part of street cleaning or as part of highways maintenance. Companies in both sectors keen on work, but evaluation in discussions with existing suppliers offered no immediate savings. Space for economies in equipment investment are likely to be explored within the next street cleaning procurement.

Client side design and specification of works (inc. TfL and S106 safety / improvement schemes)	Largely in-house, with substantial flexible (temporary) work force	Wide variety of models, including fully managed services, call-off frameworks etc. Hot market where permanent recruitment historically difficult
Contract Management and inspection of works	Largely in-house, with small flexible (temporary) work force	Again a wide variety of models. Important opportunities to be much smarter about eyes and ears on the street.
Aboriginal works	New contract just being let	Not currently aligned with highways maintenance and market interest unknown

3.21 This shows the importance, in a rapidly evolving market place, of thoroughly reviewing the scope of the relevant contracts, to determine the best position for Brent.

Value for money and potential for savings

3.22 Clearly, it is always possible to spend less on highways maintenance, but this must be balanced against a poorer quality network. The prize is to spend less but obtain the same or better quality. The procurement debate is centred on the presumption that better specification, larger contracts and market certainty will produce improved value for money.

3.23 Where there are commodity elements to these contracts, this seems likely, as do savings generated by more efficient client side activities. However, it is interesting to note that in October 2009 Brent participated in a London-wide benchmarking exercise providing information on our network, contract specification and type, expenditure levels and unit rates. The results of this benchmarking exercise were published in May 2010 and distributed to the London boroughs by TfL.

3.24 Benchmarking data included boroughs that have either a single contract or multiple contracts and the report stated that ‘the cheapest overall contracts for both Inner and Outer London were as a result of single larger contracts being let, not as a result of multiple contracts, and were contractors who had a larger share of the market not niche local contractors’.

3.25 Despite the conclusion from the report detailed in paragraph 3.24, it is interesting to note, that of the 24 Inner and Outer London boroughs participating, the cost of Brent’s combined model was the 3rd lowest. (The value of Brent’s combined model was the 2nd lowest of the 15 participating outer London boroughs.) . Notwithstanding that there would be some differences in contract requirements in terms of service standards, this demonstrated that the existing Brent framework agreements provided value for money and informed the decision to extend them for the 12 months period.

3.26 This shows that the presumptions at 3.22 are not automatically true, and that Brent would be well served by further market testing of different models.

Continuing work and next steps.

3.27 The issues set out in this report show clearly that the highways maintenance procurement market is in a state of extreme flux in London. Key issues can be summarised as:

- The opportunities presented by the development of a common specification, due in October 2011
- The as yet unknown opportunities for call off from TfL contractual arrangements or other developments in London
- The emerging WLA thinking in this domain, although Brent may be further ahead than other colleagues
- The evolving market, influenced by the TfL procurement but also seeking new opportunities which might shape the most cost-effective scope for Brent.

3.28 In this complex environment, it is not recommended to simply replicate the existing contract arrangements. In particular, being able to adopt key elements of the common specification and align contract timetables with TfL (which will eventually pull other players into the same calendar) represent strong motivations for enabling some extension of the current arrangements to 31 March 2013. This would also enable some further discussion about the most effective contract strategy, including use of frameworks, broad or narrow collaborations and scope of contracted services.

Current arrangements and short term contract provision

3.29 As noted above, the current frameworks cannot be simply extended. However, the seven months involved, from August 2012 to March 2013, represents limited values of work, below those required for EU tendering.

3.30 It is therefore recommended that the Council appoints the contractors detailed at Appendix 1 that are working under its existing framework agreements to the 6 multi-provider interim highways maintenance frameworks. This would be for seven months. Detailed below is the estimated value for each of the proposed frameworks for the seven month duration:

Framework	Works/Services Provided	Value over 7 months
1	Machine Laid bituminous surfacing	£1,520k
2	Hand Laid Surfacing	£ 930k
3	Footway Paving	£2,300k
4	Anti-Skid Surfacing	£75k
5	Street Furniture	£50k
6	Line Marking	£90k

3.31 Officers have considered whether the above arrangements should be aggregated. If this was done, the estimated value of the proposed arrangement would be in excess of EU thresholds. On balance however, Officers consider it is appropriate to proceed with 7 interim individual framework agreements as:

- The existing disaggregation of these works is considered to be appropriate to the Council's current needs and such arrangements have been in place for four years, operating successfully.
- The framework agreements are for quite different types of activities, and although some schemes involve a combination of works, the works / services are usually delivered independently of other operations
- The current disaggregated arrangements have achieved value for money for the Council as detailed in paragraph 3.25.
- The Council's clear intention to go to the market very shortly,
- The intention is to appoint current contractors to these short term frameworks

3.32 As these are new interim framework agreements, there is also a risk that the existing contractors will not agree to continue to carry out the work for the existing rates (RPI adjusted annually). However, as these are multi-framework agreements with three suppliers appointed to each, and it is less than 12 months since the last round of negotiations, it is likely that one or more of the contractors will be willing to work to existing prices Officers would also try to negotiate further discounts or savings that could be made for this period. The prices would be evaluated within each framework, and work would be awarded to the most economically advantageous.

3.33 Under the Council's standing orders, any contract over £156K (the EU threshold for services) should be subject to tendering by public advertisement. The recommended course of action therefore requires Members to agree an exemption to standing orders in accordance with Standing Order 84(a) on the basis of good operational reasons as set out in this report.

3.34 Officers have begun a process of reviewing the scope and specification, and anticipate returning to Executive in January or February 2012 with a detailed recommendation for future contract strategy which would align contracts to a start date of 1 April 2013.

4.0 **Financial Implications**

4.1 A seven month extension should not result in contractor prices increasing and it may even give Brent some efficiency savings, depending on further negotiations. A 2% efficiency saving on an estimated value of approximately £5m would result in around £100k worth of savings.

4.2 However, this assumes that all the contractors currently in the Highways Maintenance framework would continue to commit to existing or lower rates. A

2009 benchmarking exercise with other London Boroughs showed that Brent's Highways Maintenance costs were amongst the lowest in London.

- 4.3 The extension would give officers adequate time to explore other options of collaborative working with TfL and other London Boroughs. Brent is particularly interested in developing a common specification for works, which could reduce process costs and result in significant savings.

5.0 **Legal Implications**

- 5.1 Section 41 of the Highways Act 1980 imposes a duty on the Council to maintain those highways for which it is the highway authority. This includes all the public highways in the Borough, except the North Circular Road.

- 5.2 The interim highway maintenance framework agreements outlined at paragraph 3.30 in this report are classified as "works" (Frameworks 1 -4) and as "services" (Frameworks 5 and 6) in accordance with the Public Contract Regulations 2006 ("the EU Regulations"). For works contracts the EU threshold for the full application of the EU Regulations is £3,927,260 whilst for services contracts the relevant threshold is £156,442. As a result of the estimated values of the interim frameworks agreements, all of the frameworks are regarded as below threshold and are therefore not subject to full application of the EU Regulations.

- 5.3 However, EU aggregation rules require that where there is a single requirement for works or services, then if this requirement is split into smaller contracts or frameworks, the value for the purpose of the EU rules is still the aggregate value, and it is this value that has to be used in deciding whether there should be an EU-compliant advertised process. There is however no definition of what is meant by "single requirement" and therefore it could be argued that the forecast expenditure for the seven month period, the Council has a single requirement for highways maintenance, which would exceed the threshold. As detailed at paragraph 3.31 above however, Officers have considered whether the above arrangements should be regarded as a single requirement for the purpose of the aggregation rules but have concluded that this is not appropriate. Officers consider that each of the 6 framework agreements is for quite different types of activities, and although some schemes involve a combination of works, the works / services are usually delivered independently of other operations. The proposed interim arrangements replicate current arrangements which have operated successfully for a number of years, providing value for money for the Council. Officers therefore consider that the division of Highways maintenance into defined areas is justifiable, and aggregation is not appropriate so as to require any of the interim framework agreements to be subject to full application of the EU Regulations.

- 5.4 When the time comes to award the interim framework agreement, officers will consider whether it is appropriate to use a voluntary award notice to reduce the range of remedies available to potential challengers. However the risk of

challenge is considered very low because officers do not consider that the aggregation rules apply so as to require the following of the EU Regulations.

- 5.5 Under Contract Standing Order 84, all contracts or frameworks with an estimated value in excess of £156,442 (the EU tendering threshold for services) must be tendered in accordance with the Council's Standing Orders and Financial Regulations. Pursuant to Contract Standing Order 84(a), the Executive may grant an exemption from such requirements on the basis of there being good operational and/or financial reasons for doing so. Officers have detailed at Section 3 that they consider that there are good operational reasons for seeking an exemption from the usual tendering requirements.

6.0 Diversity Implications

- 6.1 The nature of highways works may have important diversity implications, ensuring that the street scene is a safe and welcoming environment. However, the precise contractual arrangements and this interim provision, is not perceived to have diversity implications.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 Given the proposed interim arrangements are in line with existing contractual arrangements Officers do not consider that there are any staffing or accommodation implications at this stage.

Background Papers

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Appendix 1

APPROVAL OF THE APPOINTMENT OF CONTRACTORS TO FRAMEWORKS FOR HIGHWAYS MAINTENANCE WORKS.

Framework	Description	Contractor recommended for appointment to framework
1.	Machine Surfacing	London Surfacing Company Ltd Aggregate Industries UK Ltd trading as Bardon Contracting Ringway Infrastructure Services Ltd
2.	Hand Surfacing	FM Conway Ltd Aggregate Industries UK Ltd trading as Bardon Contracting O'Hara Bros
3.	Footway Relay	J & B Construction Co. Ltd VolkerHighways Ltd Aggregate Industries UK Ltd trading as Bardon Contracting
4.	Anti Skid Surfacing	VolkerHighways Ltd FM Conway Ltd
5.	Street Furniture Painting & Incidental Repairs/Replacement	VolkerHighwaysLtd J & B Construction Co. Ltd
6.	Line Markings	Wilson & Scott (Highways) Ltd Volker Highways Ltd FM Conway Ltd