



Officer Key Decision

Report to the Strategic Director of Regeneration & Environment

Authority to Agree a Variation of the LoHAC Lump Sum Contract

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Jonathan Westell Highways Contract & Delivery Manager Tel: 020 8937 3660 Email: jonathan.westell@brent.gov.uk Tony Kennedy Head of Highways & Infrastructure Tel: 020 8937 5151 Email: tony.kennedy@brent.gov.uk

1.0 Purpose of the Report

- 1.1 To seek approval from the Strategic Director, Regeneration and Environment in consultation with the Lead Member for Environment to vary the London Highways Alliance Contract (LoHAC) Lump Sum Contract.

2.0 Recommendations

- 2.1 That the Strategic Director, Regeneration and Environment in consultation with the Lead Member for Environment agree to the variation of the London Highways Alliance Contract (LoHAC) Lump Sum Contract on agreed terms.

3.0 Detail

- 3.1 Brent entered into an eight year contract on 1st April 2013 to provide a range of highway services, including reactive maintenance works, through the London Highways Alliance Contract (LoHAC). The appointed contractor is Conway Aecom.

- 3.2 Officers regularly receive comments from residents and members alike regarding the consistency and responsiveness of service when reporting defects on the public highway. The current arrangement has an inherent source of tension, where the cost of repairing defects classed as high priority are included in the Lump Sum, but the Council has to pay extra for the repair of Medium priority defects. This can give rise to disputes if officers feel that a high priority defect has, in their opinion, been miscategorised as medium priority. This can at times take several months to resolve.
- 3.3 Bringing the inspection regime in-house and paying for the services through the Schedule of Rates, rather than Lump Sum will provide officers with more control to choose where and when repairs are ordered and enables a more responsive approach to dealing with members' reports and ordering multiple repairs within a specified area. The overall budget for this work will remain the same.
- 3.4 A report went to Cabinet in July 2017 and the Cabinet approved the 'in principle' negotiated agreement for a variation of the existing Lump Sum as set out below:
- a) **Cyclic & Reactive Inspections**
Remove the lump sums for Cyclic and Reactive Safety Inspections. Transfer two Cyclic Safety Inspectors plus one Reactive Safety Inspector from Conway Aecom to the London Borough of Brent via a TUPE process to allow the Highway Inspections to be carried out by the London Borough of Brent moving forward.
 - b) **High Priority (Cat 1 & Cat 2H) Repairs**
Remove the lump sum for Cat 1 & Cat 2H repairs. Use the Contract Schedule of Rates item coverage with a percentage uplift for works of seven days or less to cover for the inefficiencies of this type of work.
 - c) **Emergency Call outs**
A small annual fee to cover a nominal contribution of the total Operational Control Room (OCR) service costs plus a Schedule of Rates item per callout (2 hours duration) to cover plant, labour and consumables. Permanent materials may be covered by a works order.
 - d) **Cyclic Gully Cleansing**
After addressing performance issues experienced during the first two years of the contract, gully cleansing is now operating very effectively; on site monitoring scores now regularly achieve 100%. The cost of this service is considered competitive in the current market and it is therefore recommended to keep cyclic maintenance a lump sum item, as it is providing good value and a reliable service.

Over the last two years we have gathered data by measuring the build-up of silt levels between cleanses. This data enables us to review the current cyclic programme and target locations where the build-up of silt levels is greatest, whilst reducing cleanses at locations where silt levels remain low.

If savings are identified through this work we will reinvest them in the repair of defects.

- 3.5 Cabinet also agreed to delegate powers to the Strategic Director, Regeneration and Environment, in consultation with the Lead Member for Environment, to finalise negotiations on agreement and on the terms for the Deed of Variation.
- 3.6 Negotiations have now concluded and Officers therefore recommend the Strategic Director, Regeneration and Environment in consultation with the Lead Member for Environment agree to the variation of the London Highways Alliance Contract (LoHAC) Lump Sum Contract on agreed terms.

4.0 Financial Implications

- 4.1 The value of the London Highways Alliance Contract (LoHAC) is approx. £8m per annum. This represents the total value of all works delivered through this contract by Conway Aecom. The proposed variations stated in paragraph 3.4 above are valued at £0.562m which is approx. 7% of the contract value. This amount will be deducted from the lump sum agreement currently paid to Conway and used by the Council to fund the additional staff costs of £0.13m for Cyclic & Reactive Inspections and to commission High Priority Repairs and Emergency call outs via the schedule of rates.
- 4.2 All costs associated with this contract variation will be contained within the existing approved budget allocation, therefore, no additional budget is required as a result of this proposal. If savings are realised through this process they will be reinvested in the repair of defects.

5.0 Legal Implications

- 5.1 Regulation 72 of the Public Contracts Regulations 2015 ('PCR 2015') provides that variations to existing contracts are permitted without commencing a new procurement in the certain circumstances. Regulation 72(f) provides that contracts may be varied where the value of the variation is below both the relevant EU procurement threshold and 10% of the initial contract value for service. The value of the variation as mentioned in paragraph 5 of this report in respect of the working arrangements and variance to the existing Lump Sum payments will be contained within the existing Lump Sum budget. The variation is therefore permitted under regulation 72(f) of the PCR 2015.
- 5.2 The recommendation is that Safety Inspections (cyclical and reactive) element of the contract with Conway Aecom are returned back in house, as mentioned in the body of this report and for the services to be delivered by the Council. The provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') will apply in respect of the employment contracts of Conway Aecom staff currently employed to delivery that element of the contract. The employment of certain Conway Aecom staff will transfer to the Council and the Council will inherit all rights, liabilities and obligations in relation to them as from the date of the transfer. TUPE implications have

been considered by Officers as part of the negotiations, employee liability information has been received and relevant consultation with the staff undertaken.

6.3 Cabinet approved the 'in principle' negotiated agreement for the variation of the existing Lump Sum and delegated authority to the Strategic Director, Regeneration and Environment, in consultation with the Lead Member for Environment, to finalise the negotiations and to agree to the variation of the LoHAC Lump Sum Contract on agreed terms.

6.4 Approval to vary the LoHAC Lump Sum Contract is classed as a key officer decision and should the Strategic Director, Regeneration and Environment agree to the variation, such decision is subject to call in and cannot be implemented for 5 days following publication of the decision.

6.0 Equality Implications

6.1 The proposals in this report have been subject to screening and there are considered to be no diversity implications that require full assessment. The proposed variation of contract does not have different outcomes for people in terms of race, gender, age, sexuality or belief.

6.2 The priority given to defects is dependent on a probability and risk score to ensure defects with greatest risk to safety will be prioritise for repair.

7.0 Consultation with Ward Members and Stakeholders

7.1 Consultation has been carried out with the Lead Member for Environment

8.0 Human Resources/Property Implications

8.1 The Strategic Director, Regeneration and Environment is referred to paragraph 5.2 and will note the proposed variation will result in staff transferring from the current contractor, ConwayAecom, to the Council. At present this will consist of 3 staff members but the exact number will depend on the number of staff eligible to transfer on the date this provision becomes effective.

9.0 Public Services (Social Value) Act 2012

9.1 The Public Services (Social Value) Act 2012 requires public authorities to have regard to economic, social and environmental well-being in connection with public services contracts but the provisions of this Act will not be relevant to the Deed of Variation.

Report sign off:

Chris Whyte

Operational Director of Regeneration and Environment