

 <b>Brent</b>	<b>Decision of Cabinet Member for Environment</b>
	<b>Report from the Strategic Director of Regeneration &amp; Environment</b>
<b>AUTHORITY TO: EXTEND THE HIGHWAYS SERVICES CONTRACT FOR TWO YEARS AND TO VARY THE CONTRACT</b>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt – Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 5, Schedule 12A of the Local Government Act 1972 namely: “Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings”
<b>No. of Appendices:</b>	1 – exempt
<b>Background Papers<sup>1</sup>:</b>	None
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## 1.0 Purpose of the Report

- 1.1 This report concerns arrangements for the provision of highways services from 1 April 2021 to 31<sup>st</sup> March 2023. This report requests individual Cabinet Member approval to extend the highways services contract for two years and to vary the contract as detailed in the report and in accordance with paragraph 13 of Part 3 of the Constitution.

## 2.0 Recommendation(s)

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

- 2.1 Agrees to extend the highways services contract for a period of two years from 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2023 and to vary the contract as set out in paragraph's 3.16 to 3.18 of the report in accordance with the delegations in paragraph 13 of Part 3 of the Constitution.
- 2.2 Notes that the decision in paragraph 2.1 is subject to the Operational Director, Environment Services, agreeing to novate the highways services contract from Conway Aecom Limited to FM Conway Limited.

### **3.0 Detail**

- 3.1 Brent currently uses the London Highways Alliance Contract (LoHAC) Framework Agreement for all its civil and specialist highways works services. The Council awarded a call-off contract (the "Highways Services Contract") from the LoHAC Framework to Conway Aecom Limited in 2013. That call-off contract comes to an end on 31st March 2021.
- 3.2 As part of the Redefining Local Services programme, officers have undertaken a detailed options appraisal of the following options: reprocure all or part of the service, in source all or part of the service, and extend the current contract.
- 3.3 In early 2020, a preferred commissioning strategy emerged, which was to:
- i) In source the highways reactive maintenance service, to be based at the Council-owned depot and yard at Unit 2, Marsh Road, Alperton ("the Depot"), from April 2022.
  - ii) In parallel, re-procure highways scheme works, planned maintenance and specialist services via a new seven year framework contract, to go live in April 2022, including provision for ad hoc reactive maintenance services to be drawn down from this framework at times when the in house service is operating at capacity. (An extensive reactive maintenance service would be drawn down for the financial year 2022-23, while the in house service is in development).
  - iii) Develop interim procurement arrangements for all highways services from April 2021 until end March 2022.
- 3.4 The interim arrangements were considered necessary given the emerging pandemic, with the possibility of staff being off sick and unable to complete a new procurement exercise and a potential lack of competition and/or quality tenders from bidders due to staff illness or if their resources are diverted to ensure delivery of existing contracts. Another factor was additional uncertainty

over the potential use of the Depot to provide the base for an in house function, given its use for essential pandemic related services.

- 3.5 The affordability of this preferred option was reviewed over the summer once the impact of the Covid-19 pandemic on Council finances had become clear. It was considered that cost was now a key factor and that there was now significant affordability risk given the high additional cost of in sourcing (£1.7m extra over 5 years and £0.7m per annum from 2024/25, compared to an additional cost of circa £0.1m per annum for re-procurement).
- 3.6 The preferred commissioning strategy was subsequently revised, with an extension of the one year interim contract arrangement for highways services to two years, for both 2021/22 and 2022/2023, to allow for a trial of a more affordable, small scale in house highways reactive maintenance service, to be integrated within the new operating model for the Depot.
- 3.7 Going live with the in house highways team in April 2021 will enable it to be evaluated during the two year highways services interim contract arrangement to inform the future commissioning strategy for highways services from April 2023.
- 3.8 The two year interim arrangement for highways services will also allow more time to reassess affordability (as the longer term impact of the Covid-19 pandemic on the Council's finances becomes clearer) and service delivery risk of the full in house highways services model and the consideration of other RLS functions that could be integrated with the in house Depot service.
- 3.9 Discussions were held with Transport for London (TfL) over the possibility of extending our draw down contract from LoHAC and TfL raised no objection to the proposed extension.
- 3.10 Discussions were then initiated with Conway Aecom Limited over the terms of the extension. Conway Aecom Limited was set up as a vehicle to deliver the LoHAC Framework and will cease to trade from 1<sup>st</sup> April 2021 when the LoHAC Framework comes to an end. Accordingly, it is necessary for the contract to be novated in order for the extension to be possible. Conway Aecom and FM Conway have mutually agreed that the Highways Services Contract can be novated from Conway Aecom Limited to FM Conway Ltd. FM Conway Limited and Aecom Limited are shareholders of Conway Aecom Limited. The novation of the Highways Services Contract will be the subject of a separate report to the Operational Director, Environment Services, seeking approval for the novation. The majority of staff are currently employed by FM Conway Limited however some staff will TUPE transfer from Conway Aecom Limited to FM Conway Ltd. The specialist services undertaken by Conway Aecom Limited will be sub-contracted to Aecom by FM Conway Limited during the contract extension.

- 3.11 Officers have completed an assessment of FM Conway Ltd's suitability to undertake the highways services contract extension using the Pre-qualification Questionnaire and selection criteria that formed part of the original LoHAC procurement exercise. FM Conway Ltd passed all the mandatory pass/fail questions and scored 77 out of 100 on their project specific questions (the threshold for a pass is 44 out of 100).
- 3.12 FM Conway Ltd has agreed to retain the existing schedule of rates and fees and charges from LoHAC with the addition of annual uplifts for inflation.
- 3.13 As Brent will directly undertake 20% of the highways repairs as part of the new in house service from 1<sup>st</sup> April 2021, there will be a circa £100k reduction per annum in the corresponding value of works issued to FM Conway Ltd during the extension.
- 3.14 An assessment has been undertaken on whether TUPE of any FM Conway Ltd staff to Brent would apply in relation to the reactive maintenance element of the services. Brent officers have concluded that TUPE is unlikely to apply to these circumstances, on the basis that the need for reactive maintenance repairs by FM Conway Ltd will not be ceasing as they will still be delivering approximately 80% of all reactive repairs.
- 3.15 The pension admission arrangements with Conway Aecom Limited will come to an end when the Highways Services Contract is novated to FM Conway Limited. The admission arrangements provide for Conway Aecom's admission as an employer to the Brent LGPS pension fund in respect of staff who TUPE transferred from Brent Council employment in March 2013 to Conway Aecom Limited. A terminal valuation will need to be carried out in respect of the arrangements with Conway Aecom Limited and a new admission agreement and bond will be arranged with FM Conway Ltd.
- 3.16 Under the LoHAC Framework there is a Volume Rebate mechanism, whereby should the annual spend aggregated across the NW sector (i.e. from all clients/boroughs) exceed £46m, then a sliding scale of rebates would apply, to be shared out among the NW sector clients based on their spend proportional to the whole. This will no longer apply for the two years' extension as the LoHAC Framework itself will come to an end on 31<sup>st</sup> March 2021.
- 3.17 There is another contractual discount, for Scheme Task Orders whose value exceeds £250,000, which has always been the subject of a difference of interpretation between the Council and the Contractor. The Council has enjoyed the benefit from this discount maintaining that it applies to any works programmes (e.g. the carriageway resurfacing programme) issued under one Scheme Task Order. The value of the discount to the Council is in the region of £40,000 per annum. The Contractor's view is that the work should be in one location for the discount to apply. For the purposes of agreeing the extension, it is proposed to vary the Highways Services Contract to clarify the

discount for Scheme Task Orders so that the contractor's interpretation will be applied for the contract extension.

3.18 As part of the discussions regarding the extension, FM Conway requested exclusivity for the delivery of services currently provided by Conway Aecom. The Highways Services Contract currently does not include a minimum level for works which are issued via a task order. It is proposed to vary the contract to provide exclusivity for a core service comprising emergency call out, gully cleansing and carriageway resurfacing, with the exception of specialist work such as injection patching and reactive maintenance. As with the current contract, reactive maintenance will be issued to FM Conway subject to good performance standards being attained and we will keep flexible the opportunity to increase the level of works undertaken by the Council Depot above 20% and/or to award reactive maintenance works to other contractors should this be required. The current LoHAC contract has a clause for tendering schemes of high value and this will remain part of the agreement. Officers are unaware of any schemes that may fall into this category at present so it may not be an issue, however, if any were to materialise during the course of the contract, the Contractor would be entitled to tender for them alongside other contractors.

3.19 In accordance with paragraph 13 of Part 3 of the Constitution, the Cabinet Member has consulted the Leader in connection with the Recommendations.

3.20 The individual Cabinet Member is asked to give its approval to these proposals as set out in the Recommendations and in accordance with the Constitution.

#### **4.0 Financial Implications**

4.1 Spend on this contract is funded by revenue, capital, LIP, S106 and income from vehicle crossings. The spend through the contract varies from year to year depending on the work programme but is in the range £7m - £8m per annum.

4.2 The rebate referred to in para 3.16 has been an average of £23k per annum. This will not be received for the contract extension years.

4.3 The contractual discount for Scheme Task Orders (para 3.17) change is estimated to cost Brent an additional £40k per annum.

4.4 Overall, expenditure on the extended contract is expected to be within available budget.

#### **5.0 Legal Implications**

5.1 Pursuant to paragraph 13 of part 3 of the Council's constitution, the Leader has delegated to individual Cabinet members the authority to extend and vary

contracts within their portfolio area in certain circumstances. Such decisions may only be taken in consultation with the Leader. It is considered that the Cabinet Member for Environment has the necessary delegated authority to agree the recommendation set out in paragraph 2.1 following consultation with the leader.

5.2 As stated at paragraph 3.14 above, the assessment undertaken by officers in relation to TUPE has concluded that, in respect of the contract extension period, TUPE is unlikely to apply in respect of the in house highways reactive maintenance service. Accordingly it is not anticipated that there will be any transfer of FM Conway staff to the Council as a result of the intention to trial a more affordable, small scale in house highways reactive maintenance service (amounting to approximately 20% of the overall works).

5.3 Any changes to the Highways Services Contract are subject to the provisions of the Public Contracts Regulations 2015 (the “PCR 2015”). Further detail of the application of the PCR 2015 to the proposals of this report is set out in Appendix 1 (exempt).

## **6.0 Equality Implications**

6.1 The proposals in this report have been subject to screening and officers believe that there are no equality implications.

## **7.0 Consultation with Ward Members and Stakeholders**

7.1 The proposals have been consulted with the RLS Members’ Reference Group.

## **8.0 Human Resources/Property Implications (if appropriate)**

8.1 FM Conway Ltd will use their own Depots for the running of highways services during this contract extension period.

## **9.0 Public Services (Social Value) Act 2012**

9.1 There are no implications arising under the Public Services (Social Value) Act 2012.

**Report sign off:**

**Alan Lunt**  
Strategic Director of Regeneration & Environment