

	<b>Officer Key Decision</b>
	<b>Report to the Director, Environment &amp; Leisure</b>
<b>AUTHORITY TO EXTEND CONTRACT FOR STREET LIGHTING</b>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key Decision
<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>	Open
<b>No. of Appendices:</b>	0
<b>Background Papers:</b>	0
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Name: Tony Kennedy Job Title: Head of Highways Management Email: tony.kennedy@brent.gov.uk

## 1.0 Purpose of the Report

- 1.1 This report requests authority to extend a contract in respect of street lighting maintenance services with FM Conway Street Lighting, as required by Contract Standing Order 112. The report summarises the reasons for the request to extend the Contract.

## 2.0 Recommendation(s)

That the Director, Environment & Leisure:

- 2.1 Approves the extension of the contract for street lighting maintenance services with FM Conway Street Lighting for a period of 2 years from 1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2025.

## 3.0 Detail

- 3.1 The Council entered into contractual arrangements for street lighting maintenance services with FM Conway on 1<sup>st</sup> June 2019 (the “Contract”). The Contract, despite being agreed between the Council and FM Conway, was never formally executed and arrangements are in place for its formal execution prior to the entry into the Deed of Extension.
- 3.2 The Contract contains provision permitting an extension of the contract for a period of 2 years from 1 April 2023 to 31 March 2025.
- 3.3 In 2018, Brent adopted a deliberate strategy to synchronise the end date for its outsourced environmental services so that they coincide for reconsideration at the same time. The Redefining Local Services (RLS) programme was subsequently initiated in May 2019 to develop and implement a commissioning strategy in time for new service arrangements to take effect from 1<sup>st</sup> April 2023.
- 3.4 Following a subsequent comprehensive review and options appraisals process and best value duty consultation, an overarching Redefining Local Services Delivery Model was approved by Cabinet on 16<sup>th</sup> August 2021. The agreed RLS Delivery Model is to re-commission its outsourced environmental services via a ‘specialist contracts’ delivery model from 1<sup>st</sup> April 2023. This comprises outsourcing using discrete, specialist contracts and the insourcing and enhancement of a small number of client functions that would provide the Council with greater strategic and financial control and improved contract management and stakeholder engagement.
- 3.5 The RLS Delivery Model aims to achieve the following overarching objectives:
  - A neighbourhood approach to managing local issues to meet the needs of local areas
  - A borough-wide approach to managing our assets and infrastructure (e.g., highways, street lighting) to ensure investment is spent well
  - A specialist contracts approach for outsourced services
  - Improved contract management and monitoring for contracted services
  - An intelligence-led approach to the deployment of resources
  - Integrated deployment of environmental enforcement services across public realm
  - Greater responsiveness to addressing issues and problems in the public realm
  - Better digital customer interface with real-time information and issue reporting

- Additional council capacity for continuous service improvement and innovation
  - Focusing specialist officers where they can add the greatest value, with more triaging between generalist and specialist roles
  - Deliver improved Social Value outcomes via our Social and Ethical Procurement Policy, including striving for carbon neutrality by 2030 and enhancing nature and biodiversity; the number of local jobs created (where appropriate for the contract), including focus on disadvantaged groups; and the number of SMEs and third sector organisations that benefit from the procurement exercises.
- 3.6 In respect of Street Lighting Services, this is defined as a Specialist Contract which should continue to be outsourced and extended until 31<sup>st</sup> March 2025.

#### **4. The Street Lighting Services Contract**

- 4.1 The current street lighting maintenance contractor, FM Conway (“FMC”), are a large highways contractor specialising in public sector contracts. Their street lighting arm is one of the largest lighting contractors operating in the south of England. Within the public sector, they undertake work for around nine London boroughs and maintain 166,443 street lighting assets across all core contracts. The service is responsible for the maintenance of approximately 20,751 streetlights and 6,000 illuminated signs and bollards within Brent.
- 4.2 The Street Lighting Maintenance contract ensures that the borough’s street lighting, illuminated bollards and signs are in working order.
- 4.3 The Council’s Winter Planned Maintenance Inspection and Maintenance programme is governed by a risk-based approach. The aim is to identify issues and deal with them before they escalate into complex problems that require greater attention and expense. Examples are the Winter bollard washing routine where defects are picked up and dealt with before they escalate into bigger issues.
- 4.4 In undertaking the street lighting maintenance programme, FMC also carry out annual and bi-annual inspections to ensure electrical compliance of the asset.
- 4.5 In addition to the annual routine maintenance programme, FMC also carry out emergency and reactive inspections as and when they are deemed necessary. These are sometimes generated following requests from residents referred to the Council’s Lighting Dept or following road traffic accidents reported to the council by third parties.

- 4.6 Key Performance Indicators (KPI's) are in place and monitored monthly as part of the contract monitoring. The contractor has met expectations over the life of the Contract. For example, KPI's for attending to emergency call outs have always been met and dangerous situations made safe, leaving sites obstruction free.
- 4.7 The RLS report to Cabinet recommended extending the FMC Lighting Maintenance contact for a period of 2 years from April 2023 as a commissioning solution for the following reasons:
- Until March 2025 the Council can expect the delivery of street lighting maintenance services by a highly experienced company with a proven track record in London.
  - The current contractor has already made the necessary investment in vehicles, plant and depot facilities.
  - The contractor can draw from a wide pool of qualified technical staff and attracts & retains staff by providing performance incentives.
  - The contractor has arrangements in place to deploy additional staff during the winter months for planned Winter maintenance activities.
  - Key costs are shared by the provider across several contracts, which makes it the least expensive option in the short-term due to economies of scale.
  - There will be no immediate need to mobilise a new provider
- 4.8 Under section 3(b) of the table at paragraph 9.5 of Part 3 of the Constitution, Corporate Directors and Directors are able to extend contracts and agreements without the need for Cabinet approval:
- (a) provided that the extension would not be in breach of the Procurement Legislation.
- (b) provided that the extension does not substantially alter the terms and conditions of the contract.
- (c) provided that there is sufficient existing budgetary provision.
- (d) if the extension goes beyond the period of extension provided for in the contract (if any) or is otherwise not in accordance with the extension provisions in the contract:
- (i) in the case of any contract, agreement, deed or other transaction with a life of not more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of six months; or
  - (ii) in the case of any contract, agreement, deed or other transaction with a life of more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of one year.

(e) the relevant cabinet member shall be consulted prior to a decision within (d) (i) or (ii) above and may request that the decision instead be referred to them.

4.9 It is considered that you have delegated authority as:

(a) the extension is not in breach of Procurement Legislation.

(b) the extension does not alter the terms and conditions of the Contract.

(c) there is existing budgetary provision.

(d) the extension is limited to that allowed for in the Contract.

(e) paragraph (d), (i) or (ii) of paragraph 4.8 do not apply as the extension is allowed for in the existing contact.

## **5.0 Financial Implications**

5.1 The value of the Contract is £4 million. The value of the proposed extension over the two years is £1.6 million, with the opportunity for a further £400k per annum for network upgrades.

5.2 The cost of this extension of the Contract will be fully funded from the Highways and Street Lighting budget.

5.3 As part of the current contract, a review was undertaken by Finance officers to confirm the company has passed the financial viability test.

## **6.0 Legal Implications**

6.1 Officers recommend the extension of the contract for Street Lighting maintenance with FM Conway Street Lighting for a period of two years from 1 April 2023 to 31 March 2025.

6.2 The value of the original contract is such that it is subject to the application of the Public Contract Regulation 2015 (PCR 2015).

6.3 The contract contains express provision allowing for the extension as recommended and as such extension is permitted in accordance with the PCR 2015.

6.4 Regulation 72(1)(a) of the PCR 2015, recognises that contracts may need to be modified without the need of a new procurement procedure where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, provided that such clauses—

- (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
  - (ii) do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement.
- 6.5 Officers at paragraph 4.9 have confirmed the proposed extension is in accordance with the Contract and therefore, the proposed extension falls within the case envisaged by Regulation 72(1)(a) of the PCR 2015.
- 6.6 The Director, Environment & Leisure is authorised pursuant to Paragraph 9.5 of Part 3 of the Constitution to extend contracts subject to the conditions set out in paragraph 4.8 above. As set out in paragraph 4.9 above, none of these conditions preclude the Director, Environment & Leisure agreeing the recommended extension.

## **7.0 Equality Implications**

- 7.1 The Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment and victimisation
  - (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,

pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

- 7.2 Under the Public Sector Equality Duty, 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.
- 7.3 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.
- 7.4 Screening was undertaken as part of the initial contract award and Officers believe that there are no adverse equality implications.

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

8.1 Not required for this report.

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

9.1 This service is currently provided by an external contractor and there are no implications for Council staff or property arising from extending the contract.

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

10.1 The Council is under a duty pursuant to the Public Services (Social Value) Act 2012 (“the Social Value Act”) to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. Whilst this report concerns an extension to the Contract, Officers have nonetheless had regard to considerations contained in the Social Value Act in relation to the extension.

**Report sign off:**

**Chris Whyte**  
**Director, Environment & Leisure**