



**Executive**  
10 December 2012

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

**Award of Contract for Highway Services**

Appendix 6 is not for publication

**1.0 SUMMARY**

- 1.1 The current Brent highway framework agreements end on 31st March 2013. This report requests that the Executive grants authority to award a call-off contract to Conway AECOM with total anticipated value of £7.8m per annum to deliver highways maintenance and related services on and around the London Borough of Brent Road Network from 1 April 2013 to 31 March 2021, as required by Contract Standing Order 88.
- 1.2 The proposed contract is a call off from one of the London Highways Alliance Contract (LoHAC) framework agreements, the product of a collaborative procurement which will be accessible to all London Boroughs and Transport for London (TfL). The report also sets out the financial savings of £485,000 a year and other benefits associated with the contract.
- 1.3 The report also sets out the next steps to ensure successful mobilisation and on-going contract management.

**2.0 RECOMMENDATIONS**

- 2.1 The Executive is requested to:
- a) Agree to the adoption of Transport for London's London Highways Alliance Contract as the Council's method of delivery for highways maintenance services from 1 April 2013.
  - b) Approve the award of a call-off contract with Conway AECOM for core highways maintenance services and improvement schemes as set out in paragraph 4.1 for 8 years for the services listed in paragraph 3.7.2.
  - c) That Members acknowledge the value of the contract for the provision of highways maintenance services is estimated to be circa £62.4m over the duration of the contract.

- d) Delegate to the Director of Environment & Neighbourhood Services, in consultation with the Lead Member for Highways & Transportation, the authority to finalise the terms of the call off contract and to agree any additional payment required under the contract to the contractor named above as a result of legal obligations on TUPE and pension protection.
- e) Note the TUPE implications set out in section 7.
- f) Delegate to the Director of Environment and Neighbourhood Services, in consultation with the lead member, the authority to finalise the terms of the call off contract and to agree any additional payment required under the contract to the contractor named above as a result of legal obligations on TUPE and pension protection and more exceptionally, payments that might be made for severance.

### 3.0 DETAILS

#### 3.1 Background

3.1.1 Highways maintenance is a business critical service for Brent Council. The cost and quality of these services has a direct influence on the quality of lives of residents and all road users within the borough.

3.1.2 On 16 January 2012 the Executive authorised Officers to work with a project established jointly by Boroughs and TfL to explore options for procurement and the delivery of highway services. The project is known as Transforming London's Highways Management (TLHM). A key workstream is London Highways Alliance Contract (LoHAC), a collaborative procurement of highways maintenance and improvement scheme framework agreements. The report advised members that TfL were proposing to tender 4 framework agreements to cover London on a geographical basis, and that Brent was covered by the proposed framework for north-west London (see appendix 1 for map). This includes a common specification – a first for highways maintenance in London, which will enable authorities using the contract to adopt best practice in the provision of services. The report informed the Executive of existing arrangements and the benefits of collaborative contract opportunities. The Executive approved participation in the collaborative procurement and also resolved:

"that the work the Director of Environment & Neighbourhood Services is leading on, as part of the Council's "One Council" programme, to identify the optimum mechanism for delivering highways services in Brent, as set out in this report, and that a further report will be presented in due course setting out a proposed way forward which will include consideration of use of the London Highways Alliance Contract, be noted."

This report therefore has dual purposes, the further consideration of the use of the LoHAC framework, and a recommendation to award a contract by calling off from that framework.

3.1.3 Following this, a One Council Project was established with the following financial targets:

Net Operational Savings (gross budget savings less additional operational costs)	2013/14 £'000s	2014/15 £'000s	2015/16 £'000s
<b>Revenue savings</b>			
Reduction in costs of highway services including staffing establishment	225	225	225
<b>Total Revenue Savings</b>	<b>225</b>	<b>225</b>	<b>225</b>

<b>Capital savings</b>			
Reduction in cost of Brent Council funded capital schemes	300	300	300
<b>NET BUDGET SAVING (budget saving less additional operational cost)</b>	<b>525</b>	<b>525</b>	<b>525</b>

3.1.4 The indicative spend on highway works is set out below. This is based on current available information and these are subject to change.

	2012/13 £'000s	2013/14 £'000s	2014/15 £'000s	2015/16 £'000s
<b>REVENUE</b>				
Carriageway Maintenance	547	547	547	547
Footway Maintenance	583	583	583	583
Drainage	67	67	67	67
Signs	10	10	10	10
Highways Lighting	10	10	10	10
Graffiti & Fly Poster Removal	258	258	258	258
Gully Cleansing	239	239	239	239
Public Convenience Maintenance	77	77	77	77
Sign shop & Highways Stores (recharges to capital schemes)	592	592	592	592
<b>CAPITAL</b>				
Capital - Main Programme	2,480	2,480	2,480	2,480
Capital – Transport for London funded schemes	2,400	3,600	2,000	2,000
Capital - S106 schemes	1,000	1,000	1,000	1,000
<b>TOTAL</b>	<b>8,263</b>	<b>9,463</b>	<b>7,863</b>	<b>7,863</b>

## 3.2 Scope of services

3.2.1 Highway services fall into one of three activity types:

1. Cyclic - those performed at determined schedules, i.e. highway inspections and regular gully cleaning
2. Reactive - those performed as a response to an incident i.e. Emergency call out services or requests for repairs received from the public.
3. Schemes - those activities performed as part of a planned scheme i.e. road resurfacing, pavement renewals and traffic calming measures.

3.2.2 Through the LoHAC framework for north-west London the following core services are available as part of each individual borough call off contract:

- Safety Inspections
- Service Inspections
- Inspection of Highway Structures
- Site Investigations and Surveys
- Design Services
- Road Pavements (including minor repairs and resurfacing)
- Kerbs, Footways and Paved Areas
- Traffic Signs

- Road Markings
- Lighting (including electrical work for signs, etc)
- Fencing
- Road Restraint Systems (including pedestrian guardrailing)
- Drainage (excluding gully cleansing)
- Earthworks
- Landscape and Ecology
- Street Cleaning (sweeping and litter picking)
- Street Cleaning (including gully cleansing; excluding sweeping and litter picking)
- Bridges and other Structures
- Tunnels
- Street Furniture (excluding signs, lighting columns and pedestrian guardrailing)
- Winter Service
- Emergency Call-Out Service
- Civil Engineering Support Works
- 3<sup>rd</sup> Party Damage
- Updating Employer's Asset Management System for Core Services

Each borough that decides to call off from the relevant framework is able to choose which of these activities it will require within its own contract. Further services can be called off from the framework at a later date if required.

### 3.3 Procurement Strategy

3.3.1 TfL's procurement strategy was designed to encourage competition and provide opportunity for a wide range of bidders to be involved e.g. by forming consortia or joint ventures. Borough representatives were included in the design of the Strategy and the evaluation of tenders. The Strategy included:

- a) the four area-based LoHAC framework agreements would be eight years' duration with call-off contracts able to be formed at any time during the framework agreement
- b) to drive maximum value through this procurement a multi stage evaluation process would be employed
- c) A rigorous pre qualification process would assess the generic capability of bidders to deliver the requirements.
- d) Bidders would be given a general briefing and individual meetings to ensure they fully understood the requirement.
- e) Pricing would be on the basis of schedule of rates for different activities or lump sums for different activities (see further 3.3.2 below). However all boroughs and TfL had existing contractors, TUPE would be a major factor. Accordingly it was decided that all tenderers should tender on the basis of rates and /or lump sums, and that additional costs as a result of TUPE would be priced through a one-off payment specific to each borough or to TfL. The one-off payment was not evaluated.
- f) Shortlisted tenders would be evaluated in the traditional way based on an assessment of quality and financial aspects and an overall tender score awarded (using a quality: price ratio of 30:70). Scores in each framework area would be ranked and the top two (or three) tenderers invited to the next stage.
- g) Tenderers who were shortlisted for multiple framework areas would be given the opportunity to demonstrate their capacity and capability to deliver multiple Lots. This approach would allow tenderers who were deemed capable of delivering multiple framework areas the opportunity to submit bids which demonstrated the financial benefit of delivering more than one framework area.

- h) Tenderers successful in qualifying for multiple framework areas, plus those who were shortlisted for a single framework area would then be invited to submit best and final offers (BAFOs).
- i) At the BAFO stage, evaluation award of framework areas would be based solely on which combination of shortlisted tenderers' financial submissions offered the best value for London.
- j) Call off contracts by TfL and individual boroughs would be co-terminus with the main framework agreements.

3.3.2 As indicated above, it was also agreed as part of the Procurement Strategy that the services under LoHAC could be priced using two methods:

- (i) Traditional schedule of rates. A comprehensive price list has been submitted by the framework contractor which is used on a menu basis to price up both schemes and reactive works
- (ii) Lump sum prices. The framework contractor has submitted a fixed price for the delivery of a service area (as listed in paragraph 3.2.2 above) against the common specification and requirements prepared by the authority. These areas tend to be planned and cyclical activities where the authority knows its requirements over the duration of the contract. The submitted lump sum prices are for the duration of the contract, if they are taken up by the authority then they are tied in for the eight year duration of the contracts, subject to performance. This transfers some contractual risk to the contractor as it has to manage increases in demand.

### **3.4 Tender Evaluation and Sustainability of Tenders**

3.4.1 TfL led the tender evaluation process with assistance from officers from the participating boroughs. The details of the evaluation process are set out in Appendix 4. Appendix 5 includes details of the checks that were carried out by the evaluation panel to ensure that bidders had put in prices and quality commitments that were sustainable i.e. the tendered levels of service must in overall terms be deliverable for the tendered sums. The Contract must provide excellent value for money for Brent's residents and be a viable business concern for the provider. A bid with a price that cannot deliver the submitted quality would be deemed as unsustainable.

3.4.2 The BAFO stage was completed in August 2012. As a result of the evaluation process, TfL appointed Conway AECOM to its north-west London LoHAC framework. This appointment has been confirmed by its Board.

### **3.5 Recommendation to use the LoHAC framework over other procurement options**

3.5.1 As indicated in the Executive report of 16<sup>th</sup> January 2012, members resolved to receive a further report enabling them to decide whether or not use of the LoHAC framework would be the best approach for the Council. As set out in that report, the alternative approaches are:

- a) Do nothing. This would result in no highways service provider after 31.03.13. This has been discounted as the Council needs to deliver their statutory duties in relation to highways services;
- b) Maintain the existing organisational arrangements and re tender the existing framework contracts. It was anticipated that there would be a marginal reduction in contract rates.

3.5.2 In conclusion, it is considered that the LoHAC deal represents the best approach for the Council on the basis of

- a. Savings (see Financial Implications section)

- b. The non-financial advantages of a contract called off from the LoHAC framework as set out in paragraph 3.6 below.

3.5.3 Accordingly it is recommended that members approve the use of the LoHAC framework for north-west London as its procurement route for highways maintenance services from 1<sup>st</sup> April 2013.

### **3.6 Advantages of the LoHAC (non-financial)**

3.6.1 Each borough and TfL will form their own call-off contract with the framework contractor. Neither other Boroughs or TfL will be party to Brent Council call-off or will have any liabilities associated with each others call-offs.

3.6.2 Brent will be able to set its own priorities and will have direct ownership of its own contract whilst benefiting from working in a collaborative environment with other boroughs (see paragraph 3.8 below for details of contract management).

3.6.3 The framework agreement will be for a period of eight years to assure best value for money and efficient delivery of the works. The long contract period enables contractors to make the necessary resource investment to deliver lasting cost and quality improvements

3.6.4 The conditions of the call-off contract are based on the NEC3 Term Services Contract, which has been amended to enable authorities to tailor the service provided by a supplier to their individual requirement.

3.6.5 The quality submissions contain a series of commitments, some of which would commit the successful supplier to innovations, added value, robust risk management, efficiencies and enhanced output quality. These quality commitments will be formalised contractually by embedding the entire quality submission into the framework agreement, and compliance with this will form part of the on-going performance management regime.

3.6.6 The contract also provides a range of other benefits to Brent residents and Brent Council including:

- a) Promoting and developing the local economy. This is achieved in part through the promotion and use, where possible, of:
  - Small and Medium Enterprises;
  - Black, Asian and Minority Ethnic businesses;
  - Suppliers from other under-represented or protected groups;
  - Suppliers demonstrating a diverse workforce composition;
- b) The Contractor is encouraged to use local suppliers and subcontractors so far as is reasonably practicable and appropriate;
- c) Appointing one local apprentice, or equivalent, per £3m spent through the framework. For Brent this means at least 2 or 3 apprentices from 2014;
- d) Establishing a complaints procedure and provide Brent with a copies of the Contractor's records relating to complaints and the Contractor's responses;
- e) Registering the Brent Contract under the Considerate Constructor's Scheme and to comply with the Considerate Constructor's Scheme Code of Considerate Practice;

- f) Joining the Freight Operator Recognition Scheme and to fit blind-spot warning devices to heavy goods vehicles;
- g) Identifying possible sources of pollution and provide detail on how they will prevent and/or reduce them including the use of low emission vehicles;
- h) highways maintenance delivered using a common specification, so increasing contractor efficiency and simplifying contract management and on-going asset management;
- i) closer working relationships established between Brent Council, London Boroughs and TfL leading to highways maintenance being delivered in a consistent manner across London taking advantage of innovation and savings through best practice;
- j) As the work will be done by one provider, rather than the current mix of up to 6 different companies there will be a far greater co-ordination, for example, when streets are being resurfaced their gullies will also be cleaned; and
- k) Supporting town centre regeneration by improving the quality of the public realm. A specific example is that the roads and pavements will be more regularly inspected in many areas, helping to identify and resolve safety issues quickly.

#### 3.6.7 In addition:

- a) This contract has been validated against the recommendations contained within the recently published National Audit Office Report - Going the Distance, Achieving better value for money in road maintenance (May 2011); and
- b) This contract has been validated against the stated objectives of the DfT's Highway Efficiency Maintenance Programme – Operational Delivery work stream.
- c) The contract will also support the delivery of Brent's Placemaking Guide.

### 3.7 Proposed award of Contract

3.7.1 In view of the recommendation to use the LoHAC framework, this report is also recommending the award of a call-off contract to the LoHAC framework contractor for north-west London.

3.7.2 As this is a schedule of rates contract, only an estimated contract value can be given, which is an estimate of £62.4m over the lifetime of the contract. This does not include the one-off cost referred to in paragraph 3.3.1(e) to allow for Brent-specific TUPE and pension costs. The proposal is for Brent Council to procure the following services from Conway AECOM (see also paragraph 4.8 for explanation of the adoption of lump sums).

Core Service	Lump* Sum	SOR
Safety Inspections (cyclic and reactive)	✓	
Site Investigations and Surveys		✓
Design Services		✓
Roads (including minor repairs, resurfacing and traffic schemes)	✓	✓
Kerbs, Footways and Paved Areas	✓	✓
Traffic Signs	✓	✓
Road Markings (reactive only)	✓	✓
Drainage (excluding gully cleansing)		✓
Earthworks (excavations)	✓	✓
Landscape and Ecology (ad-hoc for schemes)		✓

<b>Core Service</b>	<b>Lump* Sum</b>	<b>SOR</b>
Gully cleansing	✓	✓
Bridges and other Structures (ad-hoc for schemes)		✓
Tunnels (not required)		
Street Furniture (excluding signs, lighting columns and pedestrian guard railing)	✓	✓
Emergency Call-Out Service (repair work under SoR)	✓	
Civil Engineering Support Works (ad-hoc)		✓
3 <sup>rd</sup> Party Damage (to be evaluated)	-	
Updating <i>Employer's</i> Asset Management System for Core Services (to be evaluated)	-	

3.7.3 During the life of the contract, officers will also explore procuring the following services through the LoHAC contract:

Inspection of Highway Structures  
 Site investigations and Surveys  
 Design Services  
 Bridges and Structures  
 3<sup>rd</sup> Party Damage  
 Updating Employer's Asset Management System  
 Road Safety Audits  
 Automatic Traffic Count Surveys  
 Manual Classified Timing Count Surveys  
 Winter gritting (currently part of the waste, recycling and street cleaning contract with Veolia)

### **3.8 Managing Contract Performance**

3.8.1 Excellent contract management is key to success going forward. As part of this, significant attention has been paid to how best to incentivise contractors to perform to their best. Brent Council will sit on the monthly Area Management Board alongside TfL. At each meeting the successful contractor will report on their performance.

3.8.2 A contract reduction mechanism has been developed to incentivise the contractors to achieve five key performance indicators (see Appendix 3). Performance will be monitored monthly and a full review of performance against these indicators will take place annually. Failure to achieve the performance indicator targets will result in the duration of the framework agreement and all associated call-off contracts being reduced by six months. The contractor will have the opportunity to win back these six months by improving their performance against the failing indicator(s) in the following years. If the performance of the contractor is sufficiently poor that the contract is reduced in duration over two consecutive years it will give Brent Council the right to terminate.

3.8.3 It is proposed that the contract will be managed by a newly established Highways Contracts & Delivery team within Transportation. This team will bring together expertise in managing contracts, delivering highway services and scheme programmes, and reducing costs.

### **3.9 Next Steps**

3.9.1 Following approval of award Brent Council, other Boroughs joining LoHAC, TfL and contractors will trigger the joint mobilisation teams to ensure the smooth implementation of the framework agreements and associated call-off contracts. Alongside this there will be a



cultural change programme designed to enhance cross organisational working amongst all framework parties. This will include joint client and contractor training workshops to support effective and efficient operation of the new contract.

- 3.9.2 The contract documents will need to be finalised, and the one-off Brent-specific TUPE and pension cost will need to be agreed. It is requested that approval to do this be delegated to the Director of Environment and Neighbourhood Services.
- 3.9.3 The new contractor will commence service 1 April 2013, on successful completion of the mobilisation period.

#### **4.0 Financial Implications**

- 4.1 Prices and savings have been calculated using a model developed by Brent Council, which compared the rates in LoHAC against our current suppliers on a like for like basis. Tendered rates and prices represent a saving of 8% against Brent Council existing contracts (although the Brent-specific price for additional TUPE and pensions costs is not yet known).
- 4.2 Savings have been achieved through a cost focused procurement process (30:70 Quality: Price ratio). Inclusion of open book pricing principles, target costing, annual efficiency challenges and volume discounts also provide opportunities for further savings in future years.
- 4.3 A volume rebate clause has been included in the contract to incentivise more Boroughs to join, as the rebate increases as the amount spent through the framework increases. All clients, including Brent, will benefit financially as more Boroughs join.
- 4.4 With TfL leading the LoHAC process, Brent Council has avoided undertaking its own procurement activity which would have cost in the region of £228K.
- 4.5 The TfL and S106 budgets have not been evaluated in this process as they will remain constant irrespective of the outcome of the evaluation process. There is however an impact on Brent's revenue budget. The authority would be able to achieve more for its money from the section 106 budget improving the infrastructure of the borough leading to less pressure on the reactive elements of the service. The direct consequence of this is not currently known but will be monitored.
- 4.6 The contracts may also be used for some works on behalf of other departments and service areas, for example Regeneration and Major Projects funded work, Parks Services and work for Housing. This work would be managed by staff in Transportation on a trading account basis.
- 4.7 Contract price increases will be based on the 'Price Adjustment Formulae Indices (Highways Maintenance) 2010', developed by the Highways Term Maintenance Association (htma), the Civil Engineering Contractors' Association and the BCIS. This index incorporates 21 different indices all of which have an effect on the cost of delivering a highways maintenance contract. Other indices were considered, including the Retail Price Index and the Consumer Price Index, however Highways Maintenance index ensures that contract rates closely track delivery costs.
- 4.8 The analysis has shown that some areas, especially safety inspections and reactive maintenance deliver significant savings and risk transfer by buying them through lump sums. Here, any defects that meet the intervention level in the common specification,

where costs do not exceed £1,000 (index linked) will be automatically repaired. Defects exceeding this cost would need to be repaired under a task order. In addition to this, safety inspections would be carried out more frequently under the LoHAC common specification and the intervention criteria are more robust than those currently used by the Council. This will deliver a better service for Brent residents.

- 4.9 The following sections set out the potential savings available to Brent Council if it participates in the LoHAC contract. It excludes any increase in savings that would arise if other boroughs were to participate because the LoHAC contract also includes a 'volume discount' clause. This means that as other London Boroughs join the contract and the amount of money spent through the contract increases further savings will be delivered. Other boroughs will be encouraged to join the contract as the savings and quality improvements are delivered. The table below summarises the revenue budget savings of **£183,913**.

<b>Revenue</b>	<b>Current</b>	<b>Costs under LoHAC</b>	<b>Variance % (-/+)</b>	<b>Brent revenue savings</b>
Replacing significantly worn traffic signs	23,386	17,668	-24	5,718
Reactive maintenance following inspections e.g. pothole repairs	842,600	746,285	-11	96,315
Emergency call outs	30,971	8,818	-71	22,153
Gully cleaning	230,131	133,816	-42	96,315
Safety inspections	130,000	78,541	-40	51,458
<b>Totals</b>	<b>1,263,448</b>	<b>985,129</b>		<b>271,959</b>
<b>Premises costs already accounted for in Civic centre business case</b>				<b>88,046</b>
<b>Realisable savings</b>				<b>183,913</b>

- 4.10 As noted above, £88,046 of premises costs associated with the above operations have already been transferred to the Civic Centre business case, so this part of the revenue savings has already been accounted for. If these services were to be retained additional premises costs would be needed to be identified as these operational services could not be delivered out of the Civic Centre.
- 4.11 It is also proposed to procure Traffic management of events through LoHAC. The service costs would be 42% lower than current costs, saving £38,943. These savings have not been included in the above analysis as the savings will be passed to the client, Wembley.

4.12 The table below summarises the savings on Brent capital expenditure of **£200,816**.

	<b>Predicted spend based on 2013/14 indicative budgets in tender documentation</b>		<b>Total future costs based on tender returns</b>			
<b>Item</b>	<b>Total (Brent / TFL / Section 106)</b>	<b>Brent capital only</b>	<b>Total (Brent / TFL / Section 106)</b>	<b>Brent</b>	<b>Variance % (-/+)</b>	<b>Brent Capital Savings</b>
Major resurfacing of roads	2,194,800	1,232,000	2,311,366	1,297,432	+0.05	65,432
Laying smaller areas of tarmac e.g. large patch repairs of roads	1,345,200	54,000	1,393,896	55,955	+0.04	1,955
Repairs and new pavements and kerbs	3,256,800	1,230,000	2,540,304	959,400	-0.22	-270,600
Antiskid road surface	108,324	10,000	133,130	12,290	+22.90	2,290
Street furniture	66,552	10,000	52,310	7,860	-21.40	-2,140
Line Marking	134,520	20,000	157,859	23,470	+17.35	3,470
Traffic signs	210,774	5,000	159,240	3,778	-24.45	-1,223
<b>Totals</b>	<b>7,316,970</b>	<b>2,561,000</b>	<b>6,748,105</b>	<b>2,360,184</b>		<b>-200,816</b>

4.13 The table below summarises the savings against the One Council expectations for 2013/14.

Net Operational Savings (gross budget savings less additional operational costs)	2013/14 target £'000s	2013/14 savings £'000s
<b>Revenue savings</b>		
Restructure of Transportation		100
Reduction in costs of highway services including staffing establishment	225	184
<b>Total Revenue Savings</b>	<b>225</b>	<b>284</b>
<b>Capital savings</b>		
Reduction in cost of Brent Council funded capital schemes	300	201
<b>TOTAL BUDGET SAVING</b>	<b>525</b>	<b>485</b>

4.14 The increase in value for money of the capital contract elements allows more planned works to be carried out under Brent, TFL and Section 106 capital funding.

4.15 During the life of the contract, officers will also explore procuring the following services through the LoHAC contract:

Inspection of Highway Structures  
 Site investigations and Surveys  
 Design Services  
 Bridges and Structures  
 3<sup>rd</sup> Party Damage  
 Updating Employer's Asset Management System

Road Safety Audits  
Automatic Traffic Count Surveys  
Manual Classified Timing Count Surveys  
Winter gritting (currently part of the waste, recycling and street cleaning contract with Veolia)

## **5.0 LEGAL IMPLICATIONS**

- 5.1 Highways maintenance and repair are a mixture of part A services and works under the EU public procurement legislation. Any tender of highways maintenance therefore requires the following of a tender process that is in compliance with EU regime. In this case, the Council participated in a collaborative procurement led by Transport for London, and therefore it was TfL who had responsibility for following the correct procedure.
- 5.2 Where the Council proposes to call off a contract from a framework agreement set up by another body, there is a required procedure set out in Contract Standing Orders 87(d). This requires that use of the framework is approved by the Chief Officer, including confirmation that a budget is available, together with confirmation from the Director of Legal and Procurement that use of the framework is legally permissible.
- 5.3 In reviewing whether use of a framework is legally permissible, the most important thing is whether the body setting up the framework did so in compliance with EU rules, including the identification of Brent as entitled to use the framework, and the need to follow a compliant process that cannot be challenged. In the case of TfL, the Council's legal adviser has identified that there were a number of areas where the process adopted by TfL was not strictly in accordance with the Regulations (though for good business reasons): this includes the use of a Best and Final Offers (BAFO) stage; a supplementary PQQ stage after invitation to tender to assess Equalities; the adoption of an 8-year term for the framework agreement when the Regulations require that the term for a framework agreement is no more than 4 years, unless exceptional circumstances exist.
- 5.4 Having said that, the risk of challenge from any aggrieved tenderer about the TfL process is low. This is because the time limit for bringing a claim has already expired. Legal proceedings have to be brought within 30 days beginning with the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen. As TfL were completely transparent in their tender documentation about the three areas referred to in the previous paragraph, the time limit runs from when tenderers received the documentation, which was several months ago.
- 5.5 As at the time of preparing this report, the Director of Legal and Procurement approval to use the framework has not yet been given. However in light of paragraph 5.4, no problems are anticipated in the issue of this approval.
- 5.5 A risk for the Council in using the TfL framework is the standard TUPE provisions within the TfL documentation. This requires the Council to indemnify the contractor for any additional cost incurred by the contractor as a result of TUPE. This is most likely to consist of costs for factors not included in TUPE information supplied to the contractor before the start of the contract. This indemnity applies not only to the Council staff but also employees of the current Council maintenance contractors. This is a risk that cannot be known, because the Council was reliant on its current contractors to supply accurate TUPE information for the use of the tenderers in preparing their bids. However it is hoped to mitigate this risk by ensuring close dialogue between the Council's current contractors and the new contractor as part of contract mobilisation, and by seeking indemnities from the current contractors to reimburse any costs for which the Council is liable to the new contractor.

- 5.6 Due to the value of the proposed Call-off contract, Executive approval is required for the award. However no Executive approval is required for the TUPE transfer / potential redundancies, as this is delegated to Chief Officers unless the number of staff affected is 20 or more.
- 5.7 As this is a call-off from a framework, there is no requirement to observe a standstill period. It will therefore be possible to award the contract as soon as the period for call-in after the Executive meeting has expired, although it may be more in the Council's interest to delay the award until after the agreement of the Brent-specific TUPE and pension costs.

## **6.0 DIVERSITY IMPLICATIONS**

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

## **7.0 STAFFING/ACCOMMODATION IMPLICATIONS**

- 7.1 As part of the project, the costs of outsourcing highway inspections, gully cleaning and sign-shop services have been investigated. Highway inspections are currently carried out by the Transportation service and gully cleaning, sign shop and emergency call outs are currently being provided by the Highway Operations team in Environment and Neighbourhood services. It is proposed to include these activities in the contract recommended for award. This part of the proposed contract will deliver savings of £124,186 per annum and is part of the recommendations to the Executive.
- 7.2 Officers identified all staff involved in providing highway inspection; gully cleansing and sign shop duties. A total of 9-12 staff (TBC) council employed staff have been identified as potentially liable to transfer to a contractor pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). These figures will be finalised during the detailed TUPE conversations that happen post contract award.
- 7.3 The staff and Unions have been kept informed during the process. The council intends to work with the selected contractor to ensure Brent staff will have the best possible support during this time. The table below sets out a summary of the consultation to date.

<b><u>Transportation staff consultation</u></b>		
Date	Event	Purpose
04.10	Unison meeting	Union briefing. Provided background to project and outlined staff implications. Background document shared with both Unison and GMB: PID
05.10	GMB meeting	Union briefing. Provided background to project and outlined staff implications. Background document shared with both Unison and GMB: PID
12.10	GMB meeting	Presented Transportation Service consultation paper.
15.10	Unison meeting	Present Transportation Service consultation paper. No direct comments received at meeting.

17.10 and 18.10	Staff consultation events	GMB and Unison were both invited to all staff presentations 17 <sup>th</sup> and 18 <sup>th</sup> October. Both responded to state that they could not attend.
14.11	GMB meeting	Update on individual staffing issue.
<b><u>Highways Operations consultation</u></b>		
08.11.12	GMB meeting	Informed them of the consultation process and content of paper – presented with paper.
12.11.12	Unison meeting	Informed them of the consultation process and content of paper – presented with paper
12.11.12	Consultation launch	Consultation launch involving meeting of 12 Highways Operations staff affected to present paper and start consultation process. GMB invited and attended to represent members.

- 7.3 Council employed staff transferring to a contractor under TUPE would do so on their current terms and conditions of employment. Although pension rights do not transfer under TUPE, the Council is under a legal obligation to secure pension rights for its staff who do transfer, which was done by requiring contractors to confirm they would either provide such staff with continued access to the Local Government Pension Scheme (“LGPS”), provide pension arrangements that are broadly comparable to the LGPS or in exceptional circumstances pay appropriate compensation to disadvantaged staff. All contractors submitting tenders did so on the basis that they would apply for admitted body status thus allowing staff continued access to the LGPS. As indicated above, any additional costs relating to pensions and TUPE were not included in the evaluation of tenders, and any additional costs will be paid as a lump sum at the start of the contract.
- 7.4 A number of highway services such as road resurfacing and repairs, paving repairs, the implementation of schemes and road markings are already provided by external contractors. Information was provided by the existing contractors for the purpose of TUPE and although the details are not known, contractor to contractor transfers will take place. There are no financial implications to the Council, though see legal comments about the Council’s responsibility for accurate TUPE information provided by its current contractors for tenderers.

## **BACKGROUND PAPERS**

The TfL Invitation to Tender

### **Appendices**

Appendix 1 – Framework Areas

Appendix 2 - List of Tier 1 Boroughs

Appendix 3 – Contract Performance

Appendix 4 - LoHAC Evaluation Summary

Appendix 5 – Assessing Sustainability of Tenders

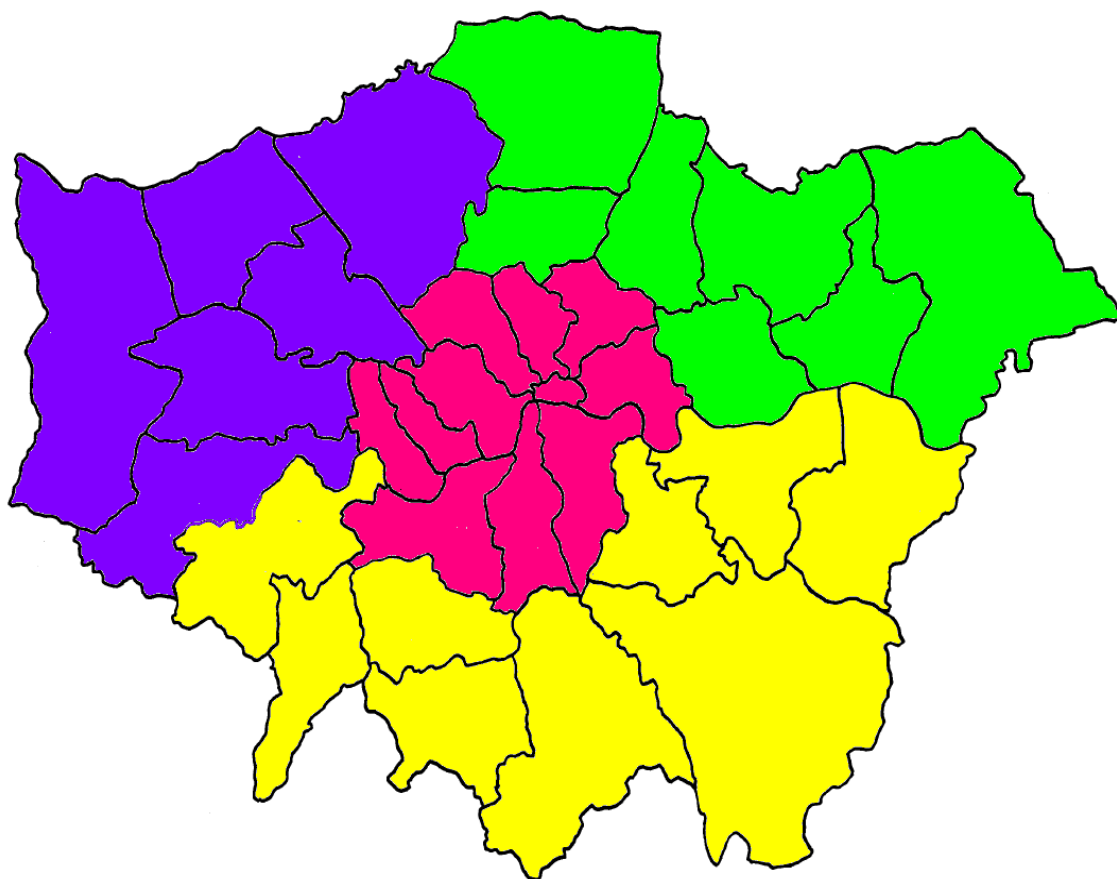
Appendix 6 – Tenderers identity

## **CONTACT OFFICERS**

Jenny Isaac  
Assistant Director, Neighbourhood Services

Sue Harper  
Director of Environment and Neighbourhood Services

## APPENDIX 1 – FRAMEWORK AREAS



**NORTH WEST – BLUE**  
**NORTH EAST – GREEN**  
**CENTRAL – RED**  
**SOUTH - YELLOW**



## **APPENDIX 2 - LIST OF TIER 1 BOROUGHES**

Tier one boroughs are those whose contracts expire in 2013 and are seeking to join the TfL contract.

South area: Kingston upon Thames, Greenwich, Bexley, Bromley and Lewisham.

Central area: Islington, Camden, Lambeth, Southwark and Tower Hamlets.

North West area: Barnet and Brent.

North East area: No Borough existing contracts expire in 2013.

## **Appendix 3 Contract Performance Regime**

### **1. Background**

- 1.1 The methodology chosen has been developed with simplicity in mind – it being important that any performance management mechanism is manageable for both parties, does not add unnecessary cost but drives improvement.
- 1.2 **Primary Performance Indicators (PPIs) and Secondary Performance Indicators (SPIs)**
  - 1.2.1 This approach addresses performance measures at two levels. At a strategic level there are five PPIs (see table 1 below) which are linked to the authorities key objectives for the contract and 21 SPIs (see table 2 below) which focus on detailed contractual compliance.
- 1.3 **Contractor Incentivisation**
  - 1.3.1 Starting in the second year, the contractor's performance in the preceding year is assessed against the five PPIs and SPIs. If for a Relevant Year the contractor achieved the consolidated annual target for the PPIs and the monthly target for a minimum of eight months for the PPIs in that year, then the Term is not reduced.
  - 1.3.2 If the Contractor achieves the requirements for fewer than five PPIs then performance against the SPIs is reviewed. If the contractor achieves the consolidated annual target for 75 per cent or more of the SPIs, then at the Term is not reduced.
  - 1.3.3 However, if the contractor achieves fewer than four out of the five PPI and less than 75 per cent of the SPIs, then the Term is reduced by six calendar months.
  - 1.3.4 If during the following year performance improves to the required level, then the lost time is won back. If performance does not improve then the Term is reduced by another six months.
  - 1.3.5 Reduction of duration in two consecutive years gives Brent Council the right to terminate.
  - 1.3.6 This approach is a very powerful tool to keep the contractor focused on constantly performing.
- 1.4 **Reporting Process**
  - 1.4.1 PPIs and SPIs will be reported four weekly to Area Management Boards for review. Part of the Area Management Board's responsibility will be to undertake benchmarking across the four frameworks.
  - 1.4.2 The contractor will report against the entire suit of PPIs and SPIs in a way which gives visibility of their performance on each client's network. This approach will enable individual clients to evaluate the contractor performance on their network and where necessary discuss areas for improvement with action plans etc. implemented at contractors cost.
  - 1.4.3 A contractor league table will be introduced to drive competition between the four contractors and in turn improve the overall standard of performance.

**Table 1 – PPIs for LoHAC Contracts**

Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome
1	<b>Public and Workforce kept Safe</b>	Percentage of Cat 1 defects repaired on time	Ensure the network is safe for all forms of traffic.
5	<b>Reduced Disruption on the Network</b>	Percentage of ECO's attended and appropriate action taken on time	Reduce Disruption through appropriate choice of action in response to Cat 1 (ECO) defects.
8	<b>Preventative Maintenance is effective</b>	Delivery of Cyclic Activities to programme	Increased availability of the network through preventative maintenance.
16	<b>Scheme Delivery is Effective</b>	Percentage Schemes completed on time	Ensure that the programme is delivered swiftly and efficiently.
20	<b>Contract Requirements fulfilled</b>	Percentage Schemes/ Works where final application payment was submitted on time	Timely and efficient processing of financial payments on completion of all works.

**Table 2 - SPIs for LoHAC Contracts**

Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome
2	<b>Public and Workforce kept Safe</b>	Percentage of Cat 2 defects repaired on time	Ensure the network is safe for all forms of traffic.
3	<b>Public and Workforce kept Safe</b>	Percentage of Safety Inspections completed on time	Ensure Safety defects are identified and appropriately categorised.
4	<b>Public and Workforce kept Safe</b>	Reduction in Injuries	To demonstrate the effectiveness of the Contractor's safety culture and processes by monitoring the AFR, AIR and other Safety related metrics.
6	<b>Reduced Disruption on the Network</b>	Percentage of precautionary salt treatments completed within required time	Safe carriageways, footways and cycleways free of winter weather related hazards.
7	<b>Reduced Disruption on the Network</b>	Percentage of works complying with the TMA requirements	Ensure the Employer meets their Network Management Duty.
9	<b>Preventative Maintenance is effective</b>	Completion of Ordered Works to timescale	To demonstrate effective planning and programming of works.
10	<b>Preventative Maintenance is effective</b>	Average number of days to repair Lighting Defects	Well maintained Lighting.
11	<b>Preventative Maintenance is effective</b>	Availability of Employer defined Tunnel Assets	Well maintained Tunnels.
12	<b>Preventative Maintenance is effective</b>	Percentage of Principal and General Inspection reports delivered and accepted on time for Bridges and Other Structures	Ensure timely and accurate reporting of Inspection Information.

Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome
13	<b>Responsible attitude to Procurement Strategy</b>	Percentage Construction and Demolition waste reused or recycled	Successful management of construction and demolition waste in order to reduce the use of raw materials, encourage recycling and reuse and minimise the waste taken to landfill sites to offer both environmental and economic benefits.
14	<b>Responsible attitude to Procurement Strategy</b>	Percentage Recycled and/or green products procured	Reduce consumption of new resources by procuring recycled and green construction materials and following the principles of sustainable procurement.
15	<b>Responsible attitude to Procurement Strategy</b>	Percentage of Contractor vehicles which meet the required Euro Standards	Reducing the environmental impact of the vehicle fleet.
17	<b>Scheme Delivery is Effective</b>	Percentage of Schemes where defects were rectified within required time	Minimum impact on the Customer after Scheme completion.
18	<b>Scheme Delivery is Effective</b>	Percentage of acceptable Health and Safety file information received within four weeks of scheme completion	Enable the Employer to fulfil its legislative requirement under CDM Regulations 2007.
19	<b>Scheme Delivery is Effective</b>	Average absolute variance between the Contractor's estimate and the Employer's instructed value for scheme works	Accurate forecasting of financial information.
	<b>Contract Requirements fulfilled</b>	Percentage compliance to updating Employer asset inventory systems within Employer timescales	Employers Asset Management System is updated promptly and accurately.
	<b>Contract Requirements fulfilled</b>	Percentage compliance to updating Employer asset inventory systems accurately	Update the inventory within the Employer's Asset Management System accurately after maintenance activity or scheme works.
	<b>Contract Requirements fulfilled</b>	Percentage of estimates for Employer instructed works received within required timescales	Ensure timely and efficient processing of instructed works.
	<b>Contract Requirements fulfilled</b>	Early Warning/Compensation Events Register	Timely response to Early Warning Notices and Compensation Events.
	<b>Improved Customer Satisfaction</b>	Response to Complaints and Requests requiring Contractor action within contractual timescales	Improved public perception of the services provided.
	<b>Improved Customer Satisfaction</b>	Third Party Claims against Contractor	Effective assistance in defence of third party claims

## Appendix 4

### 1.1 Tender Process and Evaluation Results

1.1.1 The tender pre-selection process (pre-qualification) took place in December 2011 with the following bidders.

Amey  
Balfour Beatty Living Places  
Ringway Jacobs  
Colas-Volker Highways-URS Scott Wilson  
MGWSP (May Gurney – WSP)  
EnterpriseMouchel  
FM Conway-AECOM  
Skanska Construction UK/ Project Centre  
Costain-J Murphy & Sons-Capita Symonds  
Bam Nuttall-Hyder Consulting

1.1.2 Five bidders from the above list were invited to tender for the NW area:

1.1.3 Five tenders were received. Following the initial compliance stage there was a three stage evaluation process:

- Stage 1 – Independent evaluation of tenderers' Quality and Financial submissions from which an overall Tender Score was calculated for each tender. Tenderers were then ranked.
- Stage 2 – Tenderers ranked in the top two (or three) in more than one area, (based on overall Tender Score), and were invited to demonstrate their ability to deliver multiple areas.
- Stage 3 – BAFOs invited from shortlisted tenderers.

### 1.2 Stage 1 Initial quality and financial evaluation

1.2.1 There were four Quality Evaluation Panels – one for each area including evaluators from TfL and London Boroughs and a range of specialist expertise. There were 35 post-tender clarifications and Consensus meetings were held 3 - 11 July 2012.

1.2.2 The Financial Evaluation Panel operated independently of the Quality Evaluation Panels. There was also a through clarification process to address errors, missing rates, caveats and assumptions, and rates outside the group norm. Quality and Financial Scores were combined using a 30:70 ratio to calculate an overall Tender Score. Top two tenderers shortlisted (or three where there was no clear distinction between second and third place).

<b>Stage 1 results for NW</b>				
Tenderer	Quality score	Financial Score	Tender Score	Rank
4	70.6	62.2	64.7	1
8	64.6	45.6	51.3	2
7	64.2	42.1	48.8	3
2	Pass threshold not met			N/A
3	Pass threshold not met			n/A

## 1.3 Stage 2 Multiple areas

1.3.1 Tenderers shortlisted in more than one area were invited to respond to seven pass/ fail criteria to demonstrate their capability and capacity to deliver multiple areas. The criteria included:

- Financial stability
- London workload
- Changes to organisational structure and/ or depot strategy based on delivering multiple areas
- Approach to delivering key services.
- Mobilisation plan
- Risk register

1.3.2 Four bidders were potentially able to submit multiple area bids. Members of the Quality Evaluation Panel undertook multiple area evaluation and two multiple area bids were considered acceptable from a quality perspective:

- Tenderer 1 for North East and Central
- Tenderer 4 for North East and North West

## 1.4 BAFO (Best and Final Offers)

1.4.1 BAFOs were invited from shortlisted tenderers based on delivering the areas they had been shortlisted in. Tenderers 1 and 4 were invited to submit BAFOs based on delivering the combination of areas they were deemed capable of delivering. Tenderers 7 and 10, who were not shortlisted, were informed they would not be invited to BAFO.

1.4.2 BAFOs were submitted on 28 August 2012. The submissions were evaluated by the Financial Evaluation Team using the financial evaluation model. On average tenderers offered a 4% reduction in rates and prices through the BAFO stage. The table below sets out the range of options evaluated and the award of Framework Agreements based on the best financial combination for the whole of London.

	North East	North West	Central	South	Percentage increase in cost
1	Tenderer 1	Tenderer 8	Tenderer 5	Tenderer 4	
2	Tenderer 1	Tenderer 8	Tenderer 1	Tenderer 4	+0.1
3	Tenderer 4	Tenderer 4	Tenderer 5	Tenderer 8	+0.2
4	Tenderer 4	Tenderer 4	Tenderer 1	Tenderer 8	+1.3
5	Tenderer 1	Tenderer 4	Tenderer 1	Tenderer 8	+1.7
6	Tenderer 1	Tenderer 4	Tenderer 1	Tenderer 8	+1.8
7	Tenderer 5	Tenderer 8	Tenderer 1	Tenderer 4	+2.5
8	Tenderer 5	Tenderer 4	Tenderer 1	Tenderer 8	+4.2

## Appendix 5: Assessing Sustainability of Tenders

To confirm that the bids are sustainable, TLHM have confirmed that they have analysed the preferred bid using the following methodology:

- a) A comprehensive review of the rates and prices tendered was undertaken for each bidder before the rates and prices were entered into the tender evaluation model. Any rates or prices identified outside of the norm, either being considered too high or too low were queried with the bidder. The bidder was then given the opportunity to confirm or revise these rates if they had been incorrectly priced. In most cases the bidder confirmed the rate or price was correct. Where they stated was incorrect, the rate was then adjusted.
- b) Each bidder pricing was compared against those tendering in that areas and against those tendering in other areas to ensure none were unreasonable low – none were
- c) Each bidder was required to provide a resource plan stating labour and management levels. This was then compared against the tender lump sums to determine each bidders expected sales per individual. This figure was then checked against the estimated cost of employment to determine if expected income was sufficient to match fixed outgoing. In all cases it was adequate.
- d) A comparison was undertaken analysing what percentage of total turnover each bidder expected to come from the three key contract activities; lump sum maintenance, reactive work and projects. In all cases bidder had constructed their bid on broadly similar expectations of work volumes and type.

The result of this analysis was that TLHM have concluded the costs of the bid to be sustainable.

The bids were also assessed to ensure that the quality of work is sustainable. To validate the quality proposals, TLHM have confirmed this has been carried out using the following methodology:

- a) An expert panel (including Brent Council staff) undertook the quality submission evaluation and they did not give undue weighting to promises not backed by resources.
- b) One to one meeting were held with the bids teams to check our understanding of their proposals and their approach to working with multiple clients.
- c) Boroughs, TfL and contractors will establish joint mobilisation teams to ensure the smooth implementation of the framework agreements and associated call-off contracts.
- d) The quality submissions contained a series of commitments, some of which would commit the successful supplier to methodologies that will bring innovations, added value, robust risk management, efficiencies and enhanced output quality. To ensure these are delivered, the preferred bidder's submission has been analysed and the quality promises have been identified. These will be formalised contractually, by embedding the bidders entire quality submission in to the final contract and compliance against them will form part of the on-going performance management regime.