



## Mayor and Cabinet

### Highways: Extension of Contracts for Footways and Resurfacing Works

**Date:** 13 January 2021

**Key decision:** Yes/No.

It is recommended that under Section 100 (A)(4) of the Local Government Act 1972, the public be excluded from the meeting during discussion of this item because it involves the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act as set out below and the public interest in maintaining the exemption outweighs the public interest in disclosing the information:

- Information relating to the financial or business affairs of any particular person (including the authority holding that information).

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Director for Public Realm, Senior Lawyer, Senior Procurement & Contracts Officer

### Outline and recommendations

This report outlines the proposed extension of existing highways' term service contracts from April 2021 to 31<sup>st</sup> March 2022. This report asks Mayor and Cabinet to approve the extension of one year to both the Footways contract with Kenson Contractors (Bennington) Ltd and the Resurfacing contract with F M Conway Ltd.

## Timeline of engagement and decision-making

The extension of existing highway term contracts for Highways Resurfacing Works Contract (*Carriageway Works*) and the Highways Footway works Contract (*Footway works*), which is required prior to 31 March 2021 and to prevent any demobilisation of the existing contractors. These contracts allow for extensions of up to one year. Approval in January allows for the continuation of programmed works with the incumbent contractors.

Formal decision on the Contract Strategy was approved by the Mayor and Cabinet in February 2020 and this included the option of extending these contracts.

## 1. Summary

- 1.1. This report recommends the extension of existing highway contracts for Highways Resurfacing Works Contract (*Carriageway Works*) and Highways Footway works Contract (*Footway works*). These contracts are respectively with F M Conway Ltd and Kenson Contracts Ltd. Both of these contracts expire on 31<sup>st</sup> March 2021 and have the option to extend by up to one year. This report asks the Mayor and Cabinet to approve the extension of these contracts as the existing performance of the contractors is considered good by Council Officers.

## 2. Recommendations

- 2.1. Mayor and Cabinet are recommended to approve a 1 year extension of the Highways Resurfacing Works Contract, at an approximate cost of £1.5m, and the Highways Footways Works Contract, at an approximate cost of £1m. The extensions commence 1 April 2021 and terminate 31 March 2022.

## 3. Policy Context

- 3.1. The Council, as Highway Authority, has a duty under Section 41 of the Highways Act 1980, to maintain the highway in a safe condition. Contractors are required to assist the Council (where applicable) to discharge its duty where possible.
- 3.2. Capital and revenue investment on the public highway network is required to ensure the Council discharges its legal duties, and traditionally external contractors assist the Council by carrying out highway construction and repair works.
- 3.3. The Council Corporate Plan (2018-22) sets out the Council's corporate strategy, values, priorities, commitments, governance, performance management and funding. The contents of this report are consistent with the Council's policy framework with particular relevance to the many economic, environmental and social improvement that rely on a modern transport system. The goal, objectives and outcomes for the intelligent management and delivery of the highways' service are aligned with the Council's Corporate Priorities. In particular highways services impacts on the following Priorities:
  - open Lewisham
  - making Lewisham greener
  - building safer communities

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- 3.4. Lewisham is committed to managing and maintaining its highway assets to ensure that they are fit for purpose and able to fulfil their functions in an efficient and sustainable manner.
- 3.5. Lewisham Council is a best value authority for the purposes of the Local Government Act 1999 and as such the Council is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The existing contracts, for these extensions, have rates that are considered competitive as they were awarded through a tender process.

## 4. Background

- 4.1. As part of fulfilling the Council's statutory duties as a highways authority, the Highway and Transport service is responsible for managing two contractors, on three contracts, to carry out maintenance and construction works on the borough's highways' network. The contracts and contractors are listed in Table 1 with those to be extended are shown in *italics*
- 4.2. Highways' maintenance is a critical service for the London Borough of Lewisham, which has a direct influence on residents' quality of life and on all road users within the borough. There is a procurement exercise to be concluded for the Highways Maintenance & Planned Works (HMPW) contract. A report relating to this matter will be presented to the Mayor and Cabinet in February 2021. However, there is an option to extend both the Footway and Resurfacing contracts by a year subject to approval from Mayor and Cabinet.

**Table 1: Current Contracts Awarded**

| Highways Contracts                          | Contractor                | Expiry               | Option to Extend Available | Description                              | Value per annum (historic) |
|---|---------------------------|----------------------|----------------------------|--|----------------------------|
| Highways Maintenance & Planned Works (HMPW) | F M Conway                | March 2021           | None                       | Responsive Maintenance and Planned Works | £2.8m                      |
| <i>Footways Works</i>                       | <i>Kenson Contractors</i> | <i>31 March 2021</i> | <i>By 12 months</i>        | <i>Footway works</i>                     | <i>£750k in 2020/21</i>    |
| <i>Resurfacing</i>                          | <i>F M Conway</i>         | <i>31 March 2021</i> | <i>By 12 months</i>        | <i>Carriageway Works</i>                 | <i>£1.3m in 2020/21</i>    |

- 4.3. In October 2018 the Mayor and Cabinet (Contracts) awarded the Resurfacing Contract, which is subject to an extension of up to 12 months, to F M Conway Ltd for a period of 24 months. This contract commenced on the 1<sup>st</sup> April 2019. This contract covers major planned resurfacing works on the carriageway, however it has also been used for resurfacing in car parks and a non-maintainable road.
- 4.4. In October 2018 the Mayor and Cabinet (Contracts) awarded the Footways Contract, which is subject to an extension of up to 12 months, to Kenson Contractors for a period of 24 months commencing on 1<sup>st</sup> April 2019. This contract is for major footways replacement works (not minor repairs) in; asphalt, natural materials, precast paving blocks and slabs.

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- 4.5. It should be noted that although the Council has these contracts in place, individual tendering exercises have been occasionally undertaken for some major highway schemes, if considered appropriate for larger highway projects, e.g. Sandhurst Road shopping parade and Deptford High Street.
- 4.6. On the anniversary of the Contract Commencement Date the rates payable shall be increased or decreased in accordance with the provisions of a clause in the contract that allows changes following the Index Figures compiled by the Department of Trade and Industry and published by The Stationery Office in the Monthly Bulletin of Indices "Civil Engineering Formula -1990 Series" and "Building Formula- Series 3". The expected increase in the schedules of rates for these contract extensions is expected to result in an increase in the region 0.6% for Resurfacing and 1.5% on Footway works.

## 5. Contract Information

- 5.1. The annual works value for the current Resurfacing Contract was reduced from £2m to £1.3m in 2020/21 and this work is funded through Council Capital. The contract includes for any resurfacing of the highway and also for TfL budgets for Principal Road resurfacing. It should be noted that the Council has not received any Principal Road resurfacing funding from TfL in 2019/20 and 2020/21. Essential resurfacing on these roads will have to be met from Council budgets.
- 5.2. The annual works value for the current Footway Contract is around £750k per annum and is funded through Council Capital and any developments where they fund necessary works to the existing highway.
- 5.3. Current performance monitoring of the existing highways contracts is carried out through performance indicators and these are reviewed at monthly meetings. The adequacy of these contractors' are measured through Key Performance Indicators (KPIs) and other contractual criteria.
- 5.4. In the Highways Resurfacing Works Contract and the Highways Footways works Contract there are 7 KPI's measuring; project programme, health and safety, quality, customer satisfaction, payments, traffic management, recycling. For the Highways Resurfacing Works Contract these KPI's F M Conway's performance has been considered "excellent". For the Highways Footways Works Contract Kenson's KPI's performance has improved during the course of the contract and is now considered "good" with some changes they have made to their adherence to a works programme.
- 5.5. There are no mobilisation requirements with the use of the permitted extension for these contracts.
- 5.6. In 2020/21 F M Conway are expected to have resurfaced 32 Roads as listed in Appendix A. Other works carried out off the highway, for the Council, are not included in this list e.g. unmaintained public highways, and car parks.
- 5.7. In 2020/21 Kenson Contractors are expected to have carried out footway works in 17 Roads as listed in Appendix B. Some asphalt footway works were carried out by F M Conway under the HMPW Contract which are not listed in this Appendix.
- 5.8. The proposed roads for programmed resurfacing and major footway works for 2021/22 are currently been formulated by officers and the extent of these works will be subject to funding to be approved.
- 5.9. The existing contractors have COVID risk assessments and business continuity plans in place. They are both, so far as is reasonably practicable, in line with UK Government advice and are committed to reducing the risk of exposure to Covid-19 to their employees, members of the public and others.
- 5.10. The option to extend these two contracts by one year was built into the original tendering exercise and award of the contracts. Officers are content to allow this

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extension to proceed and are in the process of considering a new tender over the next year to allow for the continuation of critical highway projects.

## 6. Financial implications

- 6.1. The Mayor is asked to approve the extension of one year to both the highways Resurfacing and Footways contracts from 1 April 2021 to 31 March 2022.
- 6.2. The funding for these contracts are mainly from the Council's Revenue contribution to Capital Budgets, £2.1m in 2020/21. As the majority of the funding is subject to the Council's budget process this may vary in future years. Other works are funded through new developments and any opportunistic funding that may become available to Highways.
- 6.3. The spend on the Resurfacing contract was £2,794,334 in 2019/20 and is expected to be £1,300,000 in 2020/21.
- 6.4. The spend on the Footway contract was £374,000 in 2019/20 and is expected to be £750,000 in 2020/21.
- 6.5. These are schedule of rates contracts, where the quantities in the contract are indicative at the time of tendering and were used to assess the Tenderer's prices. These quantities give no guarantee or exclusivity of work quantities to be carried out each financial year.
- 6.6. In 2021/22, the costs of works carried out will be contained within available budgets, to be determined during the budget setting process, and any other funding that may become available to Highways as mentioned in 6.1 above.
- 6.7. These contracts are essential to ensure that investment in the highways' asset is achieved during the contract period.

## 7. Legal implications

- 7.1. The Council's Constitution contains requirements about how to procure and manage contracts. These are in the Contract Procedure Rules (Constitution Part IV), some of which are requirements based on the procurement Public Contracts Regulations 2015 ("the Regulations") with which the Council must comply. Those requirements were complied with when the contracts were awarded.
- 7.2. Both contracts were procured on the basis of a 2 year contract with the option to extend for 1 year. The recommendation in the report is to extend the contracts within the extension period. This is a 'Permitted Extension' under the Contract Procedure Rules, being one which was clearly provided for in the original procurement and contract documents (as set out in Rule 17 of the Contracts Procedure Rules, and Regulation 72 of the Regulations 2015).
- 7.3. The report sets out the reasons why this extension is proposed. It notes that the performance of the incumbent contractors is above satisfactory.
- 7.4. The extension of these contracts is not a Key Decision under the Constitution because the approval to award the contracts on the basis of the extension was approved at the point the contracts were awarded.
- 7.5. The Equality Act 2012 (the Act) places on the Council a public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

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- 7.6. In summary, the Council must, in the exercise of its functions, have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not.
- 7.7. The duty is a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.8. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>.
- 7.9. The Equality and Human Rights Commission (EHRC) has issued guides for public authorities in England giving advice on the equality duty. The ‘Essential’ guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice.

## **8. Equalities implications**

- 8.1. The Council’s Equalities objectives are addressed in the current contract documents.
- 8.2. Pedestrians and public transport users, particularly vulnerable users and people with mobility impairments are affected by poorly maintained surfaces. Investing in and maintaining the highway infrastructure will improve access and ensure residents and visitors to Lewisham can move around safely and easily.

## **9. Climate change and environmental implications**

- 9.1. The highways’ contract environmental implications are extensive and include that of; recycling, minimising the environmental impact of construction works, environmental management systems, plant and vehicles to the latest Euro standards.
- 9.2. The Council’s environmental objectives are addressed in the contract documentation and were part of the criteria used in the original tender evaluations.
- 9.3. The highways’ resurfacing contract has no direct environmental implications except for that of recycling and disposal of contaminated waste e.g. tar. It should be noted that F M Conway are committed to the recycling of their materials to minimise the environmental impact of their work. They have stated that where they have ongoing investment and innovative solutions to manage their carbon footprint, minimising environmental impacts and reducing the amount of waste sent to landfill. If tar material has to be removed then it will be recycled through either dilution with other materials (to allowable standards) or used as a foam mix (cold mix asphalt base course) or as a last resort taken to a disposal facility.
- 9.4. In the Footway contract award documents Kenson stated that they achieved a 95%

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reduction in waste sent to landfill over the previous three years.

- 9.5. F M Conway Ltd and Kenson Contractors Ltd are certified to ISO 14001:2015 (Environmental Management System).
- 9.6. All Kenson's vehicles are currently FORS Silver standard and they are committed to FORS Gold accreditation for any new LGV/HGV vehicles to be purchased. At the time of tendering all Conway's vehicles were FORS Gold standard.
- 9.7. The use of recycled materials on the highway is extensive, particularly in fill materials to excavations and in the road structure.
- 9.8. Examples of environmental implications in these contracts include; landfill, recycling of waste, vehicles used for operations, innovative sustainable design and construction solutions that have the potential to lower whole life carbon and life cost, choice of materials to be used, management of supply chain, environmental quality assessments.
- 9.9. For works that are let through the footway contract existing materials are used or left in situ, where possible, especially natural stone e.g. granite or sandstone.

## 10. Crime and disorder implications

- 10.1. There are no specific crime and disorder implications resulting from this report.

## 11. Health and wellbeing implications

- 11.1. The contractors will be constructing, subject to funding, a number of measures that can improve peoples' health and this includes, reducing trip hazards, and footways and carriageway network improvements to encourage both walking and cycling.

## 12. Social Value implications

- 12.1. The contract Social value targets were set to describe the additional value created in the delivery of the highways service, which has a wider community or public benefit.
- 12.2. Social Value and Economic targets were included in this existing contract and are being monitored by Officers.
- 12.3. In the Resurfacing and Footways contracts the targets for F M Conway and Kenson Contractors were to provide 2 new Apprenticeships each. Their social value targets through these contracts are monitored by the Council Local Labour & Business Officers.

## 13. Background papers

| Short Title of Document                 | Date          | File Location                        | Contact Officer | Exempt Information |
|---|---------------|--------------------------------------|-----------------|--------------------|
| Highways Contract Strategy 2021 Onwards | February 2020 | 4 <sup>th</sup> Floor Laurence House | Louise McBride  |                    |
| Highways Contract Strategy 2019 Onwards | April 2018    | 4 <sup>th</sup> Floor Laurence House | Louise McBride  |                    |

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|   |                 |                                      |                |  |
|---|-----------------|--------------------------------------|----------------|--|
| Highways Resurfacing Contract (2019 to 2021) - AWARD OF CONTRACT                        | 31 October 2018 | 4 <sup>th</sup> Floor Laurence House | Louise McBride |  |
| Highways Footways Contract (2019 to 2020/21) - AWARD OF CONTRACT Mayor & Cabinet Report | 10 October 2019 | 4 <sup>th</sup> Floor Laurence House | Louise McBride |  |
| Highways Maintenance Planned Works Contract (2014-2019)                                 | 4 December 2013 | 4 <sup>th</sup> Floor Laurence House | Louise McBride |  |

## 14. Glossary

| Term     | Definition                                      |
|----------|---|
| HMPW     | Highways and Maintenance Planned Works Contract |
| KPI's    | Key Performance Indicators                      |
| Kenson's | Kenson Civils and Highways                      |
| TfL      | Transport for London                            |

## 15. Report author and contacts

- 15.1. Louise McBride 020 8314 6486, [louise.mcbride@lewisham.gov.uk](mailto:louise.mcbride@lewisham.gov.uk)
- 15.2. Comments for and on behalf of the Executive Director for Corporate Resources provided by Shola Ojo, Principal Accountant, Financial Services ([shola.ojo@lewisham.gov.uk](mailto:shola.ojo@lewisham.gov.uk)).
- 15.3. Comments for and on behalf of the Director of Law, Governance and HR provided by Mia Agnew, Senior Lawyer, Legal Services ([mia.agnew@lewisham.gov.uk](mailto:mia.agnew@lewisham.gov.uk)).

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**Appendix A**  
**List of Roads Resurfaced or proposed in 2020/21**

|                          |                   |
|--------------------------|-------------------|
| Alan Pegg Place Bus Stop | Ravensbourne Road |
| Alpha Road               | Somertrees Avenue |
| Broadfield Road          | Thornford Road    |
| Brocklehurst Street      | Venner Road       |
| Brockley Grove           | Waldram Place     |
| Brookehowse Road         | Whitefoot Terrace |
| Chudleigh Road           |                   |
| Clarendon Rise           |                   |
| Como Road                |                   |
| Cranfield Road           |                   |
| Cressingham Road         |                   |
| De Frene Road            |                   |
| Farren Road              |                   |
| Guibal Road              |                   |
| Hare And Billet Road     |                   |
| Headcorn Road            |                   |
| Hither Green Lane        |                   |
| Ladywell Road            |                   |
| Lee Road                 |                   |
| Malyons Road             |                   |
| Manwood Road             |                   |
| Myron Place              |                   |
| Northwood Road           |                   |
| Osberton Road            |                   |
| Perry Vale               |                   |
| Radlet Avenue            |                   |

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## Appendix B

### List of Roads with Major Footway Works proposed to be carried out in 2020/21 by Kenson Contractors.

|                               |
|-------------------------------|
| <b>Road Name</b>              |
| <b>Paving Slabs Laying</b>    |
| Ballamore Rd                  |
| Brockley Grove                |
| Devonshire Road               |
| Durham Hill                   |
| Eddystone Road                |
| Gallahad Road                 |
| Launcelot Rd                  |
| Montacute Road                |
| Polsted Road                  |
| Ravensbourne Park             |
| Ravensbourne Park Crescent    |
| Reigate Road                  |
| Stillness Road                |
| <b>Road Name</b>              |
| <b>Recycled Asphalt Works</b> |
| Bideford Rd.                  |
| Cowden St.                    |
| Cranmore Rd.                  |
| Ilfracombe Rd.                |
| Longdown Rd.                  |

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