



## Mayor and Cabinet

### **Report title: Highways and Traffic Works Partnering Contract**

**Date:** 10 February 2021

**Key decision:** Yes.

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Executive Director for Housing, Regeneration and Public Realm; Head of Highways and Transport, Senior Lawyer, Procurement and Contracts Manager

### **Outline and recommendations**

The report reviews the recent and ongoing Highways Maintenance & Planned Works procurement exercise, assesses future strategic need and recommends a procurement route to benefit the council.

The recommendations are:

- To agree the strategy for highway service delivery via works contracts as set out in this report;
- To agree to cease the current Highways Maintenance & Planned Works procurement exercise;
- To agree to a one year extension of the current Highways Maintenance & Planned Works, to March 2022, to align the end date with the Footway Maintenance Contract and the Resurfacing Contract; and
- To agree to a new procurement of a new consolidated Highways Works Partnering Contract, for a period of 8 years, with the option to extend for a further 2 years.

## Timeline of engagement and decision-making

Formal decision on the Contract Strategy was approved by the Mayor and Cabinet in February 2020

### 1. Summary

- 1.1. This report reviews the recent and ongoing Highways Maintenance & Planned Works procurement exercise, considers the strategic needs for the council in its delivery of highways projects and improvements with a view to other existing highways contracts.
- 1.2. Consideration is given to an alternate route, halting the present exercise, extending the present contract by one year and combining all highways contracts, for the benefit of the council.

### 2. Recommendations

- 2.1. It is recommended that Mayor and Cabinet agree:
  - a. To the strategy for highway service delivery via works contracts as set out in this report;
  - b. To cease the current Highways Maintenance & Planned Works procurement exercise;
  - c. To a one year extension of the current Highways Maintenance & Planned Works, to March 2022, to align the end date with the Highways Footway works Contract (*Footway works*) and the Highways Resurfacing Works Contract (*Carriageway Works*) at a cost of £2.8 million; and
  - d. To a new procurement of a new consolidated Highways Works Partnering Contract, for a period of 8 years, with the option to extend for a further 2 years.

### 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. The Contractor is 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 how the Council's corporate strategy, values, priorities and budget. The contents of this report are consistent with the Council's policy framework with particular relevance to the many economic,

## Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

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

- 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. To meet its priority to secure "best value" public services 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.
- 3.6. The value of the Highways and Traffic Works Partnering Contract will be over the threshold set out in the Public Contracts Regulations 2015 (as amended) and therefore is required to be openly advertised.

#### **4. Background**

- 4.1. Historically, in order to fulfil Council's statutory duties as a highways authority, three contracts were procured to carry out maintenance and construction works on the boroughs highways network. Currently all the highways' streetworks inspections are carried out by internal staff and major highways projects are designed with the support of an external consultant (eg Deptford Park Liveable Neighbourhoods and Sydenham Park Footbridge span replacement).
- 4.2. Highways' maintenance and works are a critical service for the London Borough of Lewisham, which has a direct influence on residents' quality of life and all road users within the borough. The three highways contracts are :
  - the Highways Maintenance & Planned Works (HMPW) Contract
  - the Footway Maintenance Contract
  - the Resurfacing Contract
- 4.3. The end of all these contracts are March 2021, however, options to extend both the Footway and Resurfacing contracts by a year, to March 2022, were considered and approved by Mayor and Cabinet in January 2021.
- 4.4. With no contracted extension period for the HMPW Contract, Mayor and Cabinet agreed to re-procure this contract in February 2020, following consideration of five service delivery options, as set out below, with an options appraisal. These were:
  - External Service Provision;
  - In-House Service Provision;
  - Use of TfL's Contract;
  - Shared Service with other Borough; and
  - Wholly owned contractor.
- 4.5. In summary, it was agreed that the Council continues to tender out its main highways contractor, through a new contract via an open tender through the Official Journal of the European Union (OJEU) process.
- 4.6. This contract would cover responsive and emergency maintenance, gully cleansing, drainage, winter service to grit roads, nonilluminated traffic signs, planned re-construction of substantial areas of defective footways and footpaths, traffic

### **Is this report easy to understand?**

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

management, major highway works, resurfacing works where part of an overall scheme and public realm highway projects. The schedule of rates can be used, if required by the Council, for works outside of the public highway e.g. parks, car parks and housing estates.

- 4.7. The tender process was commenced and although the procurement exercise has not been concluded, further consideration has been given to the strategic direction of the council's highway and traffic needs and the benefits of consolidating all three contracts, to achieve best value.

## 5. Revised Contract Approach

- 5.1. 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.
- 5.2. Since the decision in February and the commencement of the tendering exercise, further consideration has been given to a single, combined and larger contract valuing in the region of £6.2m per annum, which will allow for less management intervention of smaller individual contracts and may attract keener prices.
- 5.3. The annual works value for the current HMPW contract is around £2.8m a year, which is made up approximately from £1.7m Council Revenue and the balance from TfL and new development funded schemes. This is complemented with two separate highways contracts; carriageway resurfacing contract and the footway works contract. Table 1 below shows the historic costs of each separate contract.

**Table 1: Current Contracts**

Highways Contract	Description	Historic annual value
Highways Maintenance & Planned Works (HMPW)	Responsive Maintenance and Planned Works	£2.8m
Footway Works	Footway Masonry works	£750k
Resurfacing	Carriageway Works	£2.7m

- 5.4. Multiple contracts covering highways maintenance and works is not a common approach and is not typical practice across London local authorities. A single consolidated contract will attract a wider range of interest, ensuring the council can evaluate the best partner to engage with for these services, whilst reducing the cost of management, through a single contractor, whilst also reducing the Council's cost in future when re-procuring, with only one contract instead of three. This approach will also allow the review of the performance regime required to attain the best results, placing the experiences of residents at its centre.
- 5.5. Although the HMPW is expected to end in March 2021, officers are recommending that this contract is extended by a further year, to March 2022. The incumbent contractor,

### Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

F M Conway Ltd, has been formally contacted to ascertain if this approach would be acceptable, should the council wish to explore this approach and they have responded favourably, under the same terms and price. The contract commenced on 1<sup>st</sup> April 2019 for 2 years with no option to extend.

- 5.6. The extension of one year allows all three contracts to be co-terminus in March 2022, and will allow a revised procurement exercise for a combined contract to be completed in the interim.
  - 5.7. The newly appointed management has made an assessment into the needs of the Council going forward, taking into consideration a new approach to improve the outcome and accountability of all highway projects through a single and larger combined contract. Procuring a combined contract would make the opportunity more attractive to the market, increasing the number of bids and competition and potentially keener prices.
  - 5.8. This approach will allow a fresh review of the terms and conditions of the contract and introduce a new partnering approach, to further strengthen collaboration, openness and trust between the council and the contractor. Experience has shown longer term contracts with partnering principals, of 8 years plus an option to extend for a further 2 years, improves working relationships and delivery. Certainty in work benefits to contractor and also benefits the local authority with strong and more accountable relationships which based on mutual beneficial long term goals, using the revised Key Performance Indicators (KPI) highlighted below. The approach encourages flexibility, in this critical area.
  - 5.9. Furthermore, Lewisham will continue to take ownership and the lead in transforming its highways, through developing a close relationship with a partner that has aligned itself with the Council's values. It is felt this approach is advantageous for Lewisham than considering alternative routes, such as seeking to use external frameworks.
  - 5.10. As mentioned, revised KPIs will be introduced to exceed demanding standard targets, focusing on the experiences of residents and will measure the following areas:
    - Customer satisfaction
    - Environmental performance
    - Health and safety records
    - Starting and completing works to programme
    - Lack of defects
    - Submission of invoices
  - 5.11. These KPIs will be monitored monthly and are designed to meet public expectations and allow residents an ability to influence the service directly and ensures key environmental factors are considered in the implementation of works. In addition, to keep our promises and to start and finish on time; and to ensure highways works are completed correctly, whilst managing council finances. The KPIs will be designed for year on year improvement and achieve high standards and will aim to improve the reputation of the council.
  - 5.12. As such, a new consolidated, combined Highways and Traffic Works Partnering Contract, will allow the council to meet its obligations whilst improving performance and outcomes for the residents and businesses of Lewisham and potentially reduce costs.
  - 5.13. It is therefore recommended to cease the current procurement exercise, extend the HPMW contract to March 2022, and initiate a new procurement of a combined contract as set out above, to commence April 2022.
- 6. Financial implications**
- 6.1. The current Highways Maintenance & Planned Works contract has an annual value of approximately £2.8m, which is currently funded through £1.7m council revenue budget

## Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

and the balance from TfL and new development funded schemes.

- 6.2. In relation to funding for 2021/22, TfL is yet to notify the council of its funding allocation. This is subject to the funding agreement between TfL and the Government. It is anticipated that TfL funding will return to a more 'business as usual' scenario in 2021/22, with LIP funding reinstated to previous levels, but it is yet to be confirmed.
- 6.3. The council revenue funding of £1.7m will be available in 2021/22 for the one year extension. Any contract spend will be contained within available funding. There will be no additional pressure on Council resources.

## **7. Legal implications**

- 7.1. The Council has a statutory duty to maintain the highways under the Highways Act 1980. The works to be carried out under this contract will provide short and long term repairs along with any improvements that are required to maintain the borough's highway infrastructure.
- 7.2. The report seeks approval to future delivery of Highways Works by an external provider. Given the potential spend on this contract (at a length of 8 + 2 years) this contract would be categorised by Contract Procedure Rules as a Category A contract. The report sets out the options considered and explains why this is the recommended option.
- 7.3. Assuming that Mayor and Cabinet accepts the recommendation for future delivery by an external provider, Contract Procedure Rules place requirements on how that should happen. The Rules require that when letting contracts steps must be taken to secure value for money through a combination of cost, quality and competition, and that competitive tenders or quotations must be sought depending on the size and nature of the contract (Rule 5). Given the potential spend on this contract the Public Contracts Regulations 2015, as amended ("the Regulations") will also apply. The requirements of both Contract Procedure Rules and the Regulations would be satisfied by an open tender procedure. The process for procurement and the award of the contract would have to be in accordance with the Contract Procedure Rules. As a Category A contract, it would be for Mayor and Cabinet to take a decision on the award of any contract.
- 7.4. The report also seeks approval to extend the current Highways and Maintenance and Planned Works contract for 1 year without carrying out a competitive process, at a cost of £2.8 million. The report notes that this organisation has been providing this service since April 2019 on terms which will continue until March 2021. The proposal is to make a change to the current contract, by extending it for a further year.
- 7.5. When varying a contract the Council is obliged to comply with the Regulations. Some variations to existing contracts may trigger a requirement to undertake a new competitive tender process. The Council's Contract Procedure Rules set out which variations can be made without a new competitive process (Constitution Part IV I, paragraph 17 of Contract Procedure Rules). This report explains why this extension to the contract for a further year is proposed.
- 7.6. Contract Procedure Rules say that where a contract variation is 'not substantial', the variation can be made (paragraph 17.5). The definition of 'substantial' takes into account matters including the nature and size of the proposed change relative to the original contract, and the likely market effect of the change (including the change to the scope and economic balance of the contract). There is a reasonable argument that the proposed extension is not substantial. As such, the variation does not trigger a requirement to undertake a new procurement. On that basis, therefore, the proposed changes are allowable under the Council's Contract Procedure Rules paragraph 17.
- 7.7. Officers are recommending that the current procurement for HMPW is abandoned in

### **Is this report easy to understand?**

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

order to carry out a new procurement which would bring all 3 highways contracts into one. The Invitation to Tender (ITT) that was included as part of the tender pack for the HMPW procurement clearly set out that the Council has the right to withdraw the ITT at any time and to re-invite tenders on the same or an alternative basis. Further the ITT states that the Council will not be liable for any bid costs, expenditure, work or effort incurred by a Tenderer in proceeding with or participating in the procurement, including if the procurement process is terminated or amended by the Council.

- 7.8. The Council has a public sector equality duty (under the Equality Act 2010 (the Act)). It covers nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.9. 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.
  - foster good relations between people who share a protected characteristic and those who do not.
- 7.10. 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.
- 7.11. 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/>.
- 7.12. 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. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/> ]

## **8. Equalities implications**

- 8.1. As part any tender evaluation process, tenderers will be asked to address equal opportunities in the Method Statements which will be assessed as part of the non-financial criteria.
- 8.2. Pedestrian and public transport users, particularly vulnerable users and people with

### **Is this report easy to understand?**

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

mobility impairments are affected by poorly maintained surfaces. Continuous investment and maintenance of 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. Highways' contracts include for environmental quality assessments where contractors need to show evidence of; recycling, minimising the environmental impact of construction works, environmental management systems, plant and vehicles standards. These will form part of the criteria in any tender evaluation for new highways contracts.
- 9.2. The contracts will have a range of Environmental Management requirements that include; reduction of carbon emissions, innovative sustainable design and construction solutions that have the potential to lower whole life carbon and whole-life cost.
- 9.3. In terms of vehicles, in line with Mayoral transport and environmental strategies and TfL's commitments to reduce pollutant and carbon dioxide emissions, any contractor will be required to increasingly use zero and ultra low emission vehicles in their fleet where and when feasible.
- 9.4. Contractors will be required to mirror the GLA group, London boroughs and wider public sector support fleet aims, to achieve: i) All cars to be zero emission capable by 2025; ii) All new cars and vans (not exceeding 3,500 kg kerb weight) to be zero emission capable from 2025; iii) All new and replacement commercial vehicles exceeding 3,500 kg kerb weight to be fossil fuel-free from 2030.
- 9.5. The use of recycled materials on the highway is extensive particularly in fill materials to excavations and in the road structure. Many contractors recycles the vast majority of their waste from their construction works i.e., asphalt, concrete pavements, kerbs, gully sludge and soil. This is used to manufacture new materials i.e. asphalt, sand, granular based fill.
- 9.6. For works that are let through the HMPW contract existing materials are used or left insitu, where possible, especially natural stone e.g. granite or yorkstone. In addition there are contract rates for; repair systems, recycling asphalt insitu by using infrared heaters, cycle infrastructure provision, non- illuminated and solar powered bollards. Warm mix asphalts are included for resurfacing, and are used where viable, because these can be laid at up to 40 degrees centigrade lower than traditional road surfacing materials.

## **10. Crime and disorder implications**

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

## **11. Health and wellbeing implications**

- 11.1. Investment and maintenance of the highway infrastructure will have an indirect impact on health as a result of the positive impact on the economic and environmental living conditions of the borough. Providing high quality public realm, improving access for all and delivering infrastructure for sustainable and active modes of travel will contribute to encouraging people to walk and cycle more and will contribute to providing the positive conditions for growth.

## **12. Social Value implications**

- 12.1. The Council has a legal requirement to consider social value when services are commissioned and social value considerations will be a part of the future tender evaluation process. The tenderers will be encouraged to locally employ.

### **Is this report easy to understand?**

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

- 12.2. The recommendations included in this report will contribute to making Lewisham greener.

### 13. Background papers

- 13.1. Reports:

Title	Date
Highways Contract Strategy (2021 onwards)	February 2020

### 14. Glossary

Term	Definition
HMPW	Highways Maintenance and Planned Works Contract
KPI's	Key Performance Indicators

### 15. Report author and contact

- 15.1. Zahur Khan  
Director of Public Realm  
[zahur.khan@lewisham.gov.uk](mailto:zahur.khan@lewisham.gov.uk)

### 16. Comments for and on behalf of the Executive Director for Corporate Resources

- 16.1. Shola Ojo, Principal Accountant, Financial Services ([shola.ojo@lewisham.gov.uk](mailto:shola.ojo@lewisham.gov.uk)).

### 17. Comments for and on behalf of the Director of Law, Governance and HR

- 17.1. Mia Agnew, Senior Lawyer, Legal Services ([mia.agnew@lewisham.gov.uk](mailto:mia.agnew@lewisham.gov.uk)).

## Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>