

## Commissioning and Procurement Sub-Committee – 15 June 2021

<b>Subject:</b>	Contract to carry out planned road maintenance and highway construction works for Nottingham City 2021-22		
<b>Corporate Director(s)/ Director(s):</b>	Dave Halstead - Director of Neighbourhood Services		
<b>Portfolio Holder(s):</b>	Councillor Rosemary Healy - Portfolio Holder for Highways, Transport and Cleansing Services		
<b>Report author and contact details:</b>	Chris Keane, Head of Highway Services <a href="mailto:Chris.Keane@nottinghamcity.gov.uk">Chris.Keane@nottinghamcity.gov.uk</a>		
<b>Other colleagues who have provided input:</b>			
<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<b>Subject to call-in</b>
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reasons:</b>	<input checked="" type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision
			<input checked="" type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Total value of the decision:</b> £1.65 million			
<b>Wards affected:</b> All wards		<b>Date of consultation with Portfolio Holder(s):</b> 26 May 2021	
<b>Relevant Council Plan Key Theme:</b>			
Nottingham People			<input checked="" type="checkbox"/>
Living in Nottingham			<input type="checkbox"/>
Growing Nottingham			<input checked="" type="checkbox"/>
Respect for Nottingham			<input type="checkbox"/>
Serving Nottingham Better			<input checked="" type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>			
<p>1. Highway Services (HS) are responsible for the delivery of highway design, construction and maintenance works through utilising both internal resources and private sector specialists &amp; contractors. These supporting contractors carry out work which exceeds the capacity of internal resources as well as specialist work activities e.g. planned carriageway resurfacing.</p> <p>2. In 20/21, Highways completed a service redesign, creating a lean cost effective solution for delivering this core service. In doing so, there is recognition that there will be increased requirements for external specialists &amp; contractors in times of peak workloads. Following a review of 2021-22 delivery programme it has identified there are a number of elements of the highways works programme that will be either over and above the capacity of the in-house delivery service or that require specialist works completing.</p> <p>These essential works, including requirements for imminent coordination and delivery, compromise of:</p> <ul style="list-style-type: none"> <li>i. Delivery of specialist road surfacing works for NCC – this is essential Planned Road Maintenance Programme for 2021-22 delivery (c. £900k)</li> <li>ii. Delivery of specialist road surfacing works supporting NCC Highway Services in-house current delivery on the Broadmarsh Scheme (c. £400k)</li> <li>iii. Delivery of Green Lane Highway Scheme, this is largely road surfacing works (c. £350k)</li> </ul> <p>3. All works identified are either currently approved, or in the process of being approved, and</p>			

form part of 2021/22 NCC Highways Delivery Programme (wholly externally funded through LTP and or grants). This year's maintenance programme comprises of budget provision carried forward from 2021/21 as a result of COVID 19 impact. Subject to all approvals, it is proposed that these works are direct awarded to Thomas Bow Limited (TB) as this would be the most appropriate way for NCC to the deliver these works within the limited time period and the necessary lead-in period for coordination and 2021/22 delivery and re-risk the City Council in the assurance of all works being delivered in-year.

4. Any delays to programmed works will result in increased risks of 1/3<sup>rd</sup> party claims due to works not being completed as planned and not delivered as publicised, therefore jeopardising NCC's Section 58 Defence. NCC currently hold a strong repudiation rate of over 90% and it's essential this is maintained and reduce insurance costs to the Authority.
5. TB, as a key specialist surfacing contractor for NCC, has demonstrated high quality delivery (on time and on target for 3 years) on the framework and have local knowledge on the road infrastructure and planning works.
6. In the ethos of the Public Interest Report and NCCs Improvement Plan, this approach sets out to reduce risks and liability for the Council this year in the most efficient means of delivery of wholly external funded highway maintenance and construction project works in the employment of proven specialists and importantly the ability for the works to be coordinated and delivered within the fixed timescales of April 2021 and March 2022.
7. The management, quality and financial controls of the works will be under the tightly controlled environment of the established Highway Service Compliance Team. Identifying the right resources for the work activities, this includes diligent monitoring of all contractor call offs and these will be subject to SLMG approval.
8. The current Highways Framework will expire in March 2022 and is currently being reviewed and proposals for a replacement framework/s to be procured for a four-year period 2022-26. This has been subject and agreed under a separate decision at Commissioning and Procurement Committee on 13 April 2021.
9. Proposals for all future highway works, 2022/23 onwards, will be accommodated through the Highway Framework Arrangements and the appropriate selection and award processes contained therein. There will be sufficient lead-in opportunity to put this in place.
10. To award current programme of works directly to TB in 2021/22, it will be necessary to obtain dispensation from contract procedure rule 4.1.2 and the requirement to carry out a tendering process should be applied to these awards, in accordance with Finance Procedure Rule 3.29.

**Exempt information:**

None.

**Recommendation(s):**

**1** To approve dispensation (in accordance with Financial Regulation 3.29) from the need to conduct a tender process in accordance with Contract Procedure Rule 4.1.2, to award a contract to Thomas Bow Limited to carry out planned maintenance and highway construction works around Nottingham with a total estimated value of £1.65m.

**1 Reasons for recommendations**

- 1.1 TB currently delivers works under a number of contracts awarded by NCC that have been tested competitively in the market, and pricing will be subject to the scrutiny of the Council's professional team, including its competent Engineers. This includes both works completed for Highways and the Major Programmes Team.
- 1.2 Ensuring value for money (VfM) is a key part to delivering these works
- 1.3 Given the tight timescales for this published programme and delays resulting from COVID, letting a contract through a 'mini competition' would jeopardise this year's programme for construction works and the available allocated road space.
- 1.4 By direct awarding to TB the City would de-risk through single programme delivery and would reduce officer time and minimise scheme costs.
- 1.5 Working with TB to deliver these works would give the following benefits:
  - Established early contractor involvement (ECI) streamlining project delivery for NCC.
  - Programme delivery approach on all schemes will greatly assist NCC with managing the highway network in 2021/22, minimising disruption, together with reducing administration costs.
  - A developed flexible and responsive delivery structure to accommodate short term changes to programmes.
  - Established service delivery for NCC and positive working relationship with NCC and clients - local knowledge on road infrastructure and planning works for NCC.
  - Established positive collaboration between the Highways Service and TB on the Broadmarsh Roadspace/Public Realm Schemes.
  - Supports delivering environmentally sustainable solutions for delivering highways maintenance and construction across Nottingham City & reducing carbon emissions.
  - Reduced whole life carbon cost of the asset by utilising local contractor provision
  - Strong links to our corporate value and objectives.
  - Keeping the pound in Nottingham.
- 1.6 Using an NEC 3 target cost approach, will enable Highway Services to ensure VfM in the coordination and planning of these essential highway works which will be delivered as an annual programme of works. The alternative, appointing under individual projects will not achieve the benefits in terms of better coordination on available road space, right timing of works, minimisation of costs in terms of; road notices/charges and uplifts.
- 1.7 By engaging TB in a Target Cost Contract, Highway Services would ensure VfM as detailed below; a target cost contract is a type of cost reimbursable contract under which the contractor is paid the 'actual cost' (usually defined in the particular contract) it incurs in carrying out the works, but subject to a target cost which is agreed by the parties at the beginning of the project. This provides transparency and better control of costs for NCC.

- 1.8 By producing a bill of quantities, before engaging the contractor we can ensure that the target cost is a realistic target cost and allows for a 'pain and gain' approach with the contractor ensuring both parties are incentivised to seek efficiencies. This will drive TB to deliver works at least cost for NCC.
- 1.9 Open book costing will ensure that the NCC engineer/contract manager can assess the costs elements and ensure that only works carried out are invoiced for by working with one contractor for all of these works will ensure continued high quality of works and materials.

This will greatly assist with transparency on each of the schemes forming part of a larger delivery programme together with reduced staffing costs for NCC.

- 1.10 Through sourcing a package of works we will achieve better VfM, rather than individual schemes and allows for monitoring of social value opportunities and to foster better working relationships. TB have previously been engaged on delivering highway surfacing & construction works and are in a unique position to deliver this programme as both a local contractor and an NCC wholly owned company.

## **2 Background (including outcomes of consultation)**

- 2.1 It is essential that NCC has a compliant route for the delivery of these highway construction and maintenance activities.
- 2.2 The Employer Hub is Nottingham City Council's local employment and training service and will help the Council to deliver opportunities for local people while providing a free recruitment and training service to meet the workforce needs of contractors
- 2.3 There has been an assessment of the funding requirements for the proposed projects that are to be delivered through this dispensation and there is nothing preventing this route to award.

## **3 Other options considered in making recommendations**

- 3.1 Procure works through existing framework arrangements – it is likely that there would be increased project initiation costs and it would not enable the full benefits of ECI. Our current framework has limited direct award options and it should be noted under future proposed arrangements there will be an ability to direct award to the No1 ranking suppliers, this will not be in place until April 2022 at the earliest.
- 3.2 Do nothing

Projects will not be delivered in line with funding requirements.

There are standing risks in relation to 1/3<sup>rd</sup> party claims and essential highway works not completed in year.

## **4 Finance colleague comments (including implications and value for money/VAT)**

- 4.1 The budget to support the cost of this decision is captured within the capital and revenue Medium Term Financial Plans and will not create a financial pressure.
- 4.2 Consideration for spend needs to be:

- a) Justified to ensure the **appropriate use of public funds**, this is set out in **section 1** to support this decision.
- b) That **VfM can be demonstrated** – there has been no mini competition undertaken on the projects contained within this report to verify this is being achieved however to demonstrate VfM the following processes will be or have been undertaken:
  - i. Delivers works under a number of contracts awarded by the NCC **that have been tested competitively in the market**, and pricing will be subject to the scrutiny of the Council's professional team, including its competent Engineers section 1.3;
  - ii. **Using an NEC 3 target cost approach**, will enable Highway Services to ensure VfM in the coordination and planning of these essential highway works which will be delivered as an annual programme of works as set out in section 1.4 and
  - iii. **TB are first placed on Nottingham City Council's Highways Framework**, in terms of quality and price for this type of work as set out in section 5.1. This is a final year of the framework which could create a risk that this outcome is not achieved.
- c) **Financial and contractual regulations have been adhered to** – this report requires dispensation of the procurement process as set out in financial regulation 3.29 for operational purposes and that time constraints to deliver the published programme would be at risk if the Council were to pursue a 'mini' competition process.

The direct award of this contract to TB does not exceed the Works Threshold Limit as set out below in section 5.1.

The need to deliver on the published Highways Maintenance plan of which any deviation will increase exposure of third party liability claims. Although it is not best practice to waive financial regulations in the procurement of goods and services however, the points raised in the procurement comments in section 5 are a mitigating factor.

- 4.3 No further dispensations from Financial Regulations will be approved for similar construction works, without a competitive process being followed unless for emergency reasons.

Ceri Walters, Head of Commercial Finance 07/06/2021

- 4.4 **Chief Finance Officers observations on dispensation**  
Dispensation from Contract Procedure Rule 4.1.2 in accordance with Financial Regulation 3.29 is supported to award the contract to TB.

## **5 Legal and Procurement colleague comments (including risk management issues, and including legal, Crime and Disorder Act and procurement implications)**

- 5.1 For operational reasons within the Highways Team - Nottingham City Council now wishes to consider making a further £1.65m of direct awards to Thomas Bow, totalling £2,25m over a 3 year period, which falls below the current Works threshold of £4,733,252. Given the value is below the Works threshold then Nottingham City Council can proceed on this basis to award a contract in line with

Nottingham City Council's Contract Procedure Rules subject to a dispensation from Contract Procedure Rule 4.1.2 using Finance Regulations Rule 3.29.

As no competition is taking place careful consideration is needed as to whether this option delivers value for money. By awarding to Thomas Bow who are first placed on Nottingham City Council's Highways Framework, in terms of quality and price for this type of work, it is expected that this would ensure Value for Money has been achieved. Running a further competition from the existing Highways Framework would provide a full assessment of Value for Money but as outlined above the impact on the operational delivery of the Highways work would be a significant delay preventing necessary works from being completed in a timely manner.

Steve Oakley, Head of Contracting and Procurement 07/06/2021

- 5.2 The Constitution permits a dispensation to be granted for operational reasons. These are set out within the report and appear from paragraph 3 of the summary section to be to enable the works within limited timescales and to allow for lead-in. Given that there are a number of existing highways frameworks in place there should be consideration as to whether the proposed works can only be effectively delivered through the direct award being proposed.
- 5.3 As per the comments provided by the Head of Contracting and Procurement the values being proposed are below the threshold for the application of the Public Contracts Regulations 2015 (as amended).
- 5.4 Finally the Council must be satisfied that it is complying with its Best Value duty as established under the Local Government Act 1999. In determining Best Value consideration should not just be given to the cost or potential savings to be achieved but the application of value to all aspects of the Council's operations and having regard to a combination of economy, efficiency and effectiveness. The application of competition in securing the delivery of services allows the Council to have confidence that it is securing Best Value so consideration must be given as to whether the information set out in the report is sufficient to reassure the proposed direct award will deliver Best Value to the Council.

Naomi Vass – Senior Solicitor, Commercial Employment and Education Team  
7/6/21

## **6 Social value considerations**

- 6.1 The direct award arrangement would ensure delivery of specialist elements, flexibility in programming and resource targeting, and opportunities for local training and employment by requiring contractors to source staff through the Employer Hub.
- 6.2 The Employer Hub is Nottingham City Council's local employment and training service and will deliver opportunities for local people while providing a free recruitment and training service to meet the workforce needs of contractors.

## **7 Regard to the NHS Constitution**

- 7.1 N/A

## **8 Equality Impact Assessment (EIA)**

8.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because:

This decision does not set out any proposals for changes in policy, service or function.

Yes



**9 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

9.1 None

**10 Published documents referred to in this report**

10.1 None