

Commissioning and Procurement Executive Committee – 15 February 2022

Subject:	Highways Sustainable Procurement Strategy - Phase 2		
Corporate Director/ Director:	Frank Jordan - Corporate Director Resident Services Mary Lester – Acting Director of Neighbourhood Services		
Portfolio Holder:	Councillor Healy - Communities, Highways and Strategic Transport		
Report authors and contact details:	Mark Bradbury, Highways Contracts & Compliance Manager Chris Keane, Head of Highway Services		
Other colleagues who have provided input:	Andrew Mitchell, Highways Compliance Manager Chris Carter, Head of Transport Strategy Mark Jenkins, Interim Head of Traffic Services		
Key Decision	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Subject to call-in
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons:	<input checked="" type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 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
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital		
If Capital, provide the date considered by Capital Board - N/A: These Frameworks/Contracts support the delivery of statutory highways maintenance function and the delivery of external capital grant funded works.			
Total value of the decision: £17.75m			
Wards affected: All Wards			
Date of consultation with Portfolio Holder: 11 November 2021 & 20 January 2022			
Relevant Council Plan Key Outcome:			
Clean and Connected Communities	<input checked="" type="checkbox"/>		
Keeping Nottingham Working	<input checked="" type="checkbox"/>		
Carbon Neutral by 2028	<input checked="" type="checkbox"/>		
Safer Nottingham	<input checked="" type="checkbox"/>		
Child-Friendly Nottingham	<input checked="" type="checkbox"/>		
Healthy and Inclusive	<input type="checkbox"/>		
Keeping Nottingham Moving	<input checked="" type="checkbox"/>		
Improve the City Centre	<input checked="" type="checkbox"/>		
Better Housing	<input checked="" type="checkbox"/>		
Financial Stability	<input checked="" type="checkbox"/>		
Serving People Well	<input checked="" type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
The purpose of this report is to seek approval for the provision of legitimate procurement arrangements to support NCC's delivery of:			
<ol style="list-style-type: none"> 1. Statutory Highway Maintenance Works 2. Highway Improvement and Public Realm Programmes 3. Specialist Support Services for Highways and Transport Strategy 			
New contracts and framework arrangements are required to be put in place to cover the following essential services;			
<ol style="list-style-type: none"> 1. Materials - Purchasing of aggregates, asphalt and ready mixed concrete 2. Plant - Hire or haulage 			

3. Plant - Hire of JCB with operator
4. Services - Purchasing of winter service weather forecasting
5. Plant - Hire of tools, plant and welfare facilities
6. Materials - Purchasing of construction materials
7. Materials - Purchasing of signs
8. Services - Maintenance of water features
9. Services & works - Design and installation of street lighting (this is excluded from current PFI arrangements)
10. Works - Painting of structures & bridges
11. Works - Removal of pigeon guano from bridges & structures
12. Services - Asset management surveys, document production and data analysis
13. Services - Transport modelling and feasibility studies

It is proposed that contracts are awarded through conducting processes in accordance with the Council's Contract Procedure Rules and requirements under the Public Contracts Regulations 2015 and where permitted, appropriate and it demonstrates Best Value, to access existing national frameworks.

Contracts are anticipated to utilise the National Engineering Council (NEC 4) Suite of Construction Contracts or other industry recognised and accepted terms.

A breakdown of the contract requirements are set out in more detail in Appendix A. This includes the proposed duration of contracts which will generally be 4 years.

In the operation of any awarded framework agreements it will be necessary to award call-off contracts for individual projects. In order to ensure oversight to the operation of any framework and subsequent call-off arrangements, this report proposes that the responsibility be delegated at an operational level to the Contracts and Compliance Manager for Highways.

Exempt information: None

Recommendations:

1 To approve the procurement and subsequent award of Contracts / Framework Agreements, as set out in appendix A.

2 To delegate authority to the Contracts and Compliance Manager for Highways to act as 'Framework Manager' on the awarded call-off from the Framework Agreements, as listed in appendix A.

1. Reasons for recommendations

1.1 Recommendation 1 - Procuring Highway Contacts & Frameworks will allow Highway Services to continue to compliantly deliver works and services in order to fulfil their statutory duty to maintain the highway and support all Transport Services in compliant delivery options. The following advantages have been identified in putting these arrangements in place:

- Enabling the delivery of external grant funded schemes in line with the timescales of the award;
- A value-for-money delivery model with no fixed financial commitment to use the framework;

- Opportunities for local Small to Medium Enterprise (SME) companies to tender for the work;
- The potential for a local workforce either through direct employment or through regional SME sub-contractors;
- Ensuring the Council complies with its duty of Best Value by going through a competitive process to evaluate price and quality;
- The ability to develop relationships with a core set of framework providers to the Council and ensure effective management through such relationships.

1.2 **Recommendation 2** – To have a named officer to have oversight of the frameworks and approve any call-off arrangements will ensure that there is appropriate and ongoing governance of the spend under and operation of the framework and that the necessary authorities and budgets are in place on a project by project basis before a call-off can be awarded.

1.3 This delivery model has a number of additional benefits including;

- Strong links to our corporate value and objectives;
- A highly flexible and responsive structure to accommodate short term changes to delivery programmes;
- Local knowledge available in the planning and assessment of proposed works

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

2.1 It is essential that the authority has a compliant procurement route for the management and delivery of highway maintenance, construction, design and transport related activities.

2.2 Highways Procurement Strategy Phase 1, as approved at Commissioning & Procurement Sub-Committee in April 2021 is well under way and on target, all implementation is in conjunction with Procurement and Legal Services. This comprises of a suite of replacement significant highway delivery frameworks and contracts for a 4-year period, commencing from early 2022. This further decision, to seek approval to procure additional works and services contracts, will actively support the Highway Procurement Strategy.

2.3 These contracts will complement the work undertaken by our Employer Hub. This 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 suppliers. This will benefit not only Nottingham Citizens with job opportunities but our framework providers in recruitment.

2.4 The Derby and Nottingham Metropolitan Strategy 2030 strengthens those existing ties. The Strategy aims to establish the national presence and international reputation that will enable the Cities to take best advantage of

opportunities (such as the Midlands Engine and foreign trade and investment) that will benefit the D2N2 area and boost the wider economy.

3. Other options considered in making recommendations

- 3.1 Not to let contracts - Not having compliant procurement measures in place will adversely affect our ability to engage with suppliers and contractors to deliver both statutory highway maintenance works and essential highway works. Further, no effective means to demonstrate to compliance with financial and procurement regulations (external grant funded) for the broader transport group at NCC.
- 3.2 To not progress new contract and framework arrangements will jeopardise funding and Nottingham would lose out on the opportunity to invest the city and in local neighbourhoods. It would also fail to demonstrate commitment to the Government's Levelling Up agenda putting at risk the ability to secure future capital funding.
- 3.3 To directly award contracts as opposed to framework contract arrangements that have no commitment to value. This would require commitment to spend at point of contract, would not provide the flexibility required for service requirements over the period required and therefore not provide value for money.

4. Consideration of Risk

- 4.1 The Department for Levelling Up, Housing and Communities (DLUCH) has the ability to invoke funding clawback from the Council if there are any issues with project performance or compliance.
- 4.2 To mitigate this risk, officers will develop risk assessment plans, regularly monitor performance, compliance, income and expenditure, as well as put in place clear escalation procedures to ensure that all funding is received and any potential risks are identified and mitigated early.
- 4.3 The Senior Responsible Officer (SRO) is the Head of Transport Strategy. The programme of capital works will be managed by officers within Growth & City Development and Resident Services. The Council has a good track record of delivering transport capital projects.
- 4.4 All delivery will be under an established project governance structure reporting into the Capital Board. The governance structure has defined reporting lines and a clear decision-making process.

5. Finance colleague comments (including implications and value for money/VAT)

- 5.1 This framework will be managed through an established framework board in order that contractors are commissioned proficiently to align with current NCC financial regulations.
- 5.2 The impact on capital and revenue funded works is provided through a mix of internal resources and external contractors procured through the framework.
- 5.3 The capital projects will require separate approval if amendments or additions to the approved Capital Programme are required following, if this occurs the Capital Board will be required to endorse the changes prior to the Council contractually

committing. Financial advice will be provided at this stage regarding the Amended Scheme of Delegation.

- 5.4 The use of contractors will be limited annually to that expenditure which is agreed in the NCC capital programme budget and revenue maintenance budgets.
- 5.5 A summary of the estimated expenditure over 4 years is provided in appendix A. At this stage it is not possible to break down this information further by financial year.
- 5.6 There is no financial commitment to use the framework therefore there is minimal risk.
- 5.7 Supplies of Building & Construction Services falling within the Construction Industry Scheme definition are subject to the Domestic Reverse Charge rules. The Council will need to ensure that the framework contains suitable provisions to enable it to demonstrate that it has taken reasonable care to ensure that it and any contractors used are compliant with these requirements.
- 5.8 The Off Payroll Working Regulations, also known as IR35, were extended to the private sector from April 2021; the Council is required to ensure that it has processes in place to ensure compliance with these regulations. These should include a requirement for contractors engaged from this framework to notify the Council of any workers within their supply chain engaged on an Off Payroll basis so that the required Employment Status checks can be made.

Comments provided by:

Tania Clayton Pérez – CRES/HW Commercial Business Partner
Gary Robbins - Senior Accountant Tax
Thomas Straw – Senior Accountant (Capital Programmes)
January 2022

6. **Legal colleague comments**

- 6.1 There are no significant legal concerns arising from the recommendations set out in this report. The recommendations are asking for authority to procure or access compliant framework agreements to provide and/or support the delivery of a range of highways related services over a 4-year period. The most suitable contracting arrangements and procurement processes will be determined in consultation with the Corporate Procurement Team and, where required, Legal Services.
- 6.2 It is understood that the value of £17.75m is the indicative maximum spend to be awarded under those contracts over the duration of the frameworks rather than a budget approval for £17.75m to be committed to those services. Any call-off contract placed under the framework must have an approved budget against it – whether as part of a departmental budget for services provided (as is likely to be the case for the majority of call-offs made by the Highways Team) - or through a project specific approval for example where Highway Services are delivering services against a funded scheme. Where a budget is in place then any awarding officer may be required to complete an Operational Executive Decision-Making Form in accordance with Constitutional requirements.
- 6.3 Recommendation 2 is to provide a smooth mechanism to place orders under the procured frameworks, without seeking any further approval to award or enter into a contract (subject to budget availability as per 6.2 above). To have authority

delegated to a Framework Manager is an appropriate mechanism as they will have full oversight as to the operation of the contracts and will ensure that call-off arrangements are made compliantly under the terms of the framework.

- 6.4 Where an officer is awarding a contract it must be in accordance with any financial authorities they have been granted under the Financial Regulations, however the proposed delegation will mean that the Framework Manager can award a call-off for any value where they have been provided evidence that there is a budget in place and approved. Regard must be had to the Council's Constitution, and specifically the Contract Procedure Rules with regard to the execution of contracts for certain values. Where a contract is required to be executed under the Council's Seal – whether due to the financial or risk value – then this will need to be executed by the Director of Legal and Governance.

Naomi Vass – Team Leader – Contracts and Commercial Team
7 January 2022

7. Procurement comments

- 7.1 There are no procurement concerns with the recommendations set out within the report. The procurement team will work with the highways department to ensure that all procurement activity delivers value for money and is in-line with Public Procurement Regulations and NCC policies.

Sue Oliver – Places Category Manager 11 January 2022.

8. Crime and Disorder Implications (If Applicable)

- 8.1 Highways Maintenance and public improvement programmes improve the lives of residents through physical regeneration improving infrastructure for the betterment of all. Improvements in physical regeneration makes a material difference in reductions in crime and disorder.

9. Social value considerations (If Applicable)

- 9.1 The overall procurement arrangements 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.
- 9.2 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 suppliers and contractors.

10. Regard to the NHS Constitution (If Applicable)

- 10.1 N/A

11. Equality Impact Assessment (EIA)

- 11.1 An EIA is not required because this is a continuation of existing services.

12. Data Protection Impact Assessment (DPIA)

12.1 A DPIA is not required because there is no impact on data protection.

13. Carbon Impact Assessment (CIA)

13.1 A CIA is not required because the carbon impact of the projects these frameworks support would be assessed on a project by project basis.

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

14.1 None.

15. Published documents referred to in this report

15.1 None.

Appendix A - Highway Services Sustainable Procurement Strategy - Phase 2

Highway Services - Highways Contracts & Framework Agreements				
Works Category		Category	Includes but not limited to	Estimated value over 4 year duration (million)
1	Supply of Aggregates, Asphalt and Ready Mixed Concrete	Materials	Supply of, aggregates, asphalt & ready mixed concrete	2.00
2	Hire of Haulage	Plant	Supply of vehicle and operator	1.00
3	Hire of JCB with Operator	Plant	Supply of JCB with associated attachments and operator	2.00
4	Winter Service Weather Forecasting	Service	Weather forecasting service to support the winter service programme	0.20
5	Tool, Plant and Welfare Hire	Plant	Hire of tools, plant, welfare	2.00
6	Construction Materials	Materials	Multiple lots covering requirement for all construction materials	6.00
7	Signs	Materials	Supply of columns, clips, permanent & temporary signs	0.60
8	Water Feature Maintenance	Works	Routine dosing and maintenance of water features at Old Market Square and Sneinton Market	0.30
9	Street Lighting Design and Installation	Services & Works	Street lighting design and installation	1.50
10	Bridge Painting 2022-2026	Works	Routine painting of bridges in line with programme requirements	0.50
11	Pigeon Guano removal at Manvers Street Bridge	Works	Pigeon Guano removal and implementation of prevention measures at Manvers Street Bridge	0.15
				16.25
Highway Services - Framework Access				
Works Category		Category	Framework Requiring Accessing	Estimated value over 4 year duration Nottingham (million)
1	Highways Asset Management Surveys, Support and Data Analysis	Services	Various national frameworks including but not limited to ESPO, G Cloud & Bloom	0.75
2	Transport Modelling and Feasibilities Studies	Services	ESPO Framework 664	0.75
				1.50
Total for Approval				17.75