

Commissioning and Procurement Executive Committee – 13 December 2022

Subject:	Highways Annual Procurement Approval 2023-24		
Corporate Director/ Director:	Frank Jordan - Corporate Director, Resident Services Mary Lester – Acting Director, Neighbourhood Services		
Portfolio Holder:	Councillor Wynter - Highways, Transport and Parks		
Report author and contact details:	Mark Bradbury, Highways Contracts & Compliance Manager Chris Keane, Head of Highway Services		
Other colleagues who have provided input:	Chris Carter / Mark Jenkins		
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	Date: 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:	£21.10m		
Wards affected:	All Wards		
Date of consultation with Portfolio Holder:	17 October 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 Council's approval for the provision of future procurement arrangements to support Nottingham City 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 Works 			
There are currently established framework arrangements in place to support highways delivery, but considering the forecast of planned work activity in future years it is essential that additional frameworks are established commencing in 2023/24.			
In preparation of this and to ensure continuity in procurement compliance for delivery in future years, additional new contracts, and framework arrangements (without commitment to spend) will be required to be put in place.			

In addition, there are requirements for approval to access third party frameworks for essential services for Highways.

Approval is sought to put procurement arrangements in place for the following essential activities:

1. Works - Multi-Disciplined Works including improvement schemes, junction improvement schemes, safety schemes, city centre improvements
2. Services – Highway design and project support
3. Services - Specialist Highway, Asset Management and Project Support
4. Services - Winter Service Weather Forecasting

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, (provided they demonstrate 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 is set out in more detail in Appendix 1. This includes the proposed duration of contracts.

In the operation of any awarded framework agreements, it will be necessary to award call-off contracts for individual projects. 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 1.
- 2 To delegate authority to the Contracts and Compliance Manager for Highways who will act as “Framework Manager” on the awarded call-off from the Framework Agreements as listed in Appendix 1.

1. Reasons for recommendations

1.1 **Recommendation 1** - Procuring Highway Contacts & Frameworks will allow Highway Services to continue to compliantly deliver works and services to fulfil statutory obligations to maintain the highway and support all Transport Services in compliant delivery options.

1.2 The identified benefits of putting these arrangements in place are:

- Continuity in the provision of compliant delivery arrangements for highways activities in response to increased grant allocation for highways and transport projects.
- 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.
- Economies in accessing established third-party frameworks where viable
- The ability to develop relationships with a core set of framework providers to the Council and ensure effective management through such relationships.

1.3 Appendix 1 outlines the frameworks and contracts required to be approved under this decision, including estimated spend over 4-year period. All framework contracts have no commitment to spend, and values stated is estimated based on current forecasts.

1.4 **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 frameworks. In addition, to ensure that the necessary authorities and budgets are in place on a project-by-project basis before a call-off can be awarded.

1.5 This delivery model has a number of additional benefits including:

- Strong links to our corporate value and objectives through:
 - I. Comprehensive compliant financial and procurement arrangements.
 - II. Provision of real opportunities for local businesses and local employment.
- 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 compliant procurement routes for the management and delivery of highway maintenance, construction, design, and transport related activities.

2.2 The current Highways Procurement Strategy was approved at Commissioning & Procurement Executive Committee in February 2022. Implementation of all named frameworks and contracts is well underway, delivered in conjunction with Procurement and Legal Services. These arrangements comprise of a suite of significant replacement highway delivery frameworks and contracts for a 4-year period.

2.3 This further executive decision, to seek approval to procure additional works and services contracts, will actively support the Highways Procurement Strategy

2.4 Highways project delivery is forecast to increase from 10m to 25m over the next 5 years, this is in response to successful transport bids, including, but not exhaustive, the Transforming Cities Fund (TCF2) and Active Travel Fund (ATF).

It's essential to forward plan to accommodate for this anticipated significant increased spend between 2022 - 2027.

Through framework use, financial risks of variation to projects are mitigated as there is no commitment to spend in any fixed year or over framework period.

- 2.5 The new 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.

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 essential highway works and projects, in particular through time limited external grant funding.

Further, no effective means to demonstrate compliance with financial and procurement regulations for the increased spend in future years by 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, its transformation 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 and therefore not provide value for money.

4. **Consideration of Risk**

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 Through the establishment of frameworks, the financial risks of variation to projects are mitigated as there is no commitment to spend in any fixed year or over framework period. Equally frameworks provide a robust, compliant means to engage the market to support on project delivery within budgetary and grant timelines.

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. If this occurs the Capital Board will be required to endorse the changes prior to the Council contractually committing. Further financial advice will be provided if additional approval is required.
- 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 1. 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 frameworks therefore there is minimal risk to NCC and significant assurance for procurement and financial compliance through the period.
- 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.

Thomas Straw, Senior Accountant (Capital Programmes) & Gary Robbins, Senior Accountant Tax - 12/10/2022

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. In any event, they must be in accordance with the Council's Constitution and relevant laws, including the Public Contract Regulations 2015.
- 6.2 It is understood that the value of £21.10m is the indicative maximum spend to be awarded under those contracts over the duration of the frameworks rather than a budget approval for £21.10m 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 most call-offs made by Highway Services) - 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 the Contracts & Compliance Manager for Highways who will act as a Framework Manager should be 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 and meet the requirements imposed by the Council's Constitution. Where an officer is awarding a contract, it must be in accordance with any financial authorities they have been granted under the Council's Constitution, 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 regarding 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 or the Head of Legal Services.

- 6.4 Where external grant funding is being used, compliance with Grant Funding Conditions must be ensured.

Anthony Heath, Contracts and Commercial Team - 07/10/2022

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 including Social Value.

Sue Oliver, Places Category Manager - 06/10/2022.

8. **Crime and Disorder Implications (If Applicable)**

- 8.1 Highways Maintenance and public realm 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 are no impacts 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 Highways and Procurement Sustainable Procurement Strategy (approved at Commissioning and Procurement Executive Committee – February 2022).

Appendix 1 - Highway Services - Spend Profile Forecast 2023/24

Highway Services - New Contract Requirements						
Works Category		Category	Works Description	Existing Framework Arrangements	Existing Framework value (£m)	Additional Framework arrangements for approval (£m)
1	Multi-Disciplined Framework	Works	Improvement schemes, junction improvement schemes, safety schemes, city centre improvements	CPU4622	10.0	15.0
2	Highway Design/Project Support Framework	Services	Design and Project expertise to support highway design functions	CPU4673	0.40	3.0
						18.0

Highway Services - Access Requirements to Third Party Frameworks						
Works Category		Category	Existing National Frameworks	Existing Framework Arrangements	Existing Framework value (£m)	Replacement Framework arrangements for approval (£m)
1	Specialist Highway, Asset Management and Project Support	Services	Various national frameworks including but not limited to ESPO (Public Sector Procurement)	CPU4673 (2023 expiry)	0.40	2.50
2	Winter Service Weather Forecasting	Services	ESPO Weather Forecasting Services Framework	CPU3122 (2023 expiry)	0.40	0.60
						3.10

Total Forecast Spend (£m)						21.10
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