

**Commissioning and Procurement Executive Committee - 14 November 2023**

<b>Subject:</b>	Highways Annual Procurement Approval 2024-25		
<b>Corporate Director:</b> <b>Director:</b>	Colin Parr - Communities, Environment and Resident Services Mary Lester – Resident Services		
<b>Portfolio Holder:</b>	Councillor Angela Kandola - Highways, Transport and Planning		
<b>Report author and contact details:</b>	Meagan Milic, Highways Compliance Manager <a href="mailto:Meagan.milic@nottinghamcity.gov.uk">Meagan.milic@nottinghamcity.gov.uk</a>  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>	Sohaib Chaudhry, Senior Commercial Business Partner Anthony Heath, Legal Contracts and Commercial Team Sue Oliver, Places Category Manager Chris Carter, Head of Transport Strategy Mark Jenkins, Head of Traffic and Flood Risk Management Mark Bradbury, Infrastructure Delivery Manager		
<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> taking account of the overall impact of the decision	<input checked="" type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 or more
Significant impact on communities living or working in two or more wards in the City	<input checked="" type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital		
<b>Type of expenditure:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Type of expenditure:</b> <input checked="" type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital Capital Board consideration is not required as the Frameworks support the delivery of the statutory highways maintenance function and the delivery of external capital grant funded works.			
<b>Total value of the decision:</b> £16.72m			
<b>Wards affected:</b> All			
<b>Date of consultation with Portfolio Holder:</b> 12 October 2023			
<b>Relevant Council Plan Key Outcome:</b>			
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"/>		
<b>Summary of issues (including benefits to citizens/service users):</b>			
The purpose of this report is to seek Council’s approval for the provision of future procurement arrangements to support Nottingham City delivery of statutory Highway Maintenance Works, Highway Improvement and Public Realm Programmes and Specialist Support Services for Highways Works.			
There are currently established framework arrangements in place to support highways delivery, but considering the level of framework spend to date and forecast planned work activity in future years, it is essential that new and additional frameworks are established commencing in 2024/25.			

In preparation of this and to ensure continuity in procurement compliance for delivery in future years, both new and additional Contracts will be required to be put in place, these will be under framework arrangements without commitment to spend.

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 – Planned Carriageway Maintenance
2. Works – Drilling, Sawing & Cutting
3. Services – Site Surveys including Ground Radar
4. Services – Winter Service Weather Forecasting

It is proposed that Frameworks 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 to access existing national frameworks (provided they demonstrate Best Value).

Frameworks 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 framework 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 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 sustained 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; through framework awards under smaller lots;
- 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; this to include further competition through mini-competition;
- 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 required to be approved under this decision, including estimated spend over a 4-year period. All frameworks have no commitment to spend, and values stated are estimated based on current operational forecasts and the MTFP.

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 approval decision was approved at Commissioning and Procurement Executive Committee on 13 December 2022. Implementation of all named frameworks are established, delivered in conjunction

with Procurement, Legal Services and in alignment with the MTFP. These arrangements comprise of a suite of significant works and services frameworks for a 4-year period.

- 2.3 This executive decision, to seek approval to procure new and additional works and services frameworks, will actively support the established Highways Procurement Strategy.
- 2.4 Highways project delivery is forecast at £15m per annum, for the next 3 years. This is in response to:
  - I. Continued delivery of area-based improvement programmes and the highways maintenance Capital Programme;
  - II. Successful transport bids, including, but not exhaustive, the Transforming Cities Fund (TCF2) and the Future High Street Fund;

It's essential to forward plan to accommodate for this anticipated significant spend between 2024 to 2027. Through framework use, financial risks of variation to projects are mitigated as there is no commitment to spend over the framework period.

- 2.5 The new frameworks 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 or Frameworks - 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 significant spend in future years by the broader Transport Group at NCC.

- 3.2 To not progress new framework arrangements will jeopardise grant 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 - this would require commitment to spend at point of contract, would not provide the flexibility required for service requirements, including commercial market opportunities, over the period and therefore not provide best value.

### **4. Consideration of Risk**

- 4.1 To manage risks, officers have developed risk assessments, 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 – effective means of demonstrating best value.

## **5. Best Value Considerations**

- 5.1 'Highway Services' deliver works for NCC's highways and transport requirements, successfully fulfilling all client work-streams. The service area delivers a hybrid model solution, using in house and outsourced scheme delivery options, through Framework Agreements.
- 5.2 Our Framework Agreements allow Highways Services to demonstrate, how the requirement to achieve best value, has been embedded throughout a compliant Procurement process.
- 5.3 An example within this process would be how a service or product is judged to be weighted against 'quality' and 'value for money'.
- 5.4 By operating a hybrid model, the service area are able to effectively manage the fluctuations within the internal programme, to offer best value for money. Where it is not possible to deliver works in house, it is usually the case that specialist skills are required.
- 5.5 A significant portion of this 'Approval to Procure' covers specialist skill sets that otherwise could not be delivered in house and or will better deliver best value by being out-source.

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

- 6.1 The purpose of the decision is to seek approval to procure to the value of £16.72m over a 4-year period. This is on behalf of 'Highways Services' and extends to the entire NCC organisation, thus servicing the 'One Framework for ALL' model. This isn't a contractual liability to spend £16.72m but to seek approvals to tender and accept bids for that value.
- 6.2 The risk involved with this decision is being unable to secure approval for procurement, which will lead to emergency measures and further pressures on the MTFP to source funding. This will also work counter-intuitively in terms of best value considerations.
- 6.3 The source of funding is capital funded, but we are receiving external grants from Local Transport Plan (LTP) of £15m which is scheduled for planned carriageway maintenance, due to be capitalised. This grant would need to be spent in accordance with the policy and requirement of the grant.

- 6.4 The remaining £1.12m works on new contract requirements, shown in appendix 1, are to be funded by the capital programme, Major Programmes as the client for this project except for the winter gritting of £400k which will be met via revenue as this a renewal of an existing framework.
- 6.5 There are currently no MTFP implications with this decision as this is to seek approval to procure. However, as this decision progresses and costing implications are considered, service area would need to monitor and be held responsible to work within these budgeted quotes with any shortfalls needing to be mitigated by the business.

Sohaib Chaudhry, Senior Commercial Business Partner - 28/06/2023

## **7. Legal colleague comments**

- 7.1 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.
- 7.2 It is understood that the value of £16.72m is the indicative maximum spend to be awarded under those contracts over the duration of the frameworks rather than a budget approval for £16.72m 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.
- 7.3 Where existing frameworks cannot be accessed, which creates a requirement to create a new Framework, depending on the particular requirements of the Framework there may be a need to engage external legal support to help create the framework. The in-house Legal Services team does not have construction law expertise at present. Engaging external legal support will create a cost that will need to be budgeted for. There may also be a need to use external legal support where the timescale to create the Framework is short due, to the resource capacity limitations of the Contracts and Commercial team. Legal Services can assist in engaging external legal support at preferential rates via the EM Lawshare framework.
- 7.4 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.

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

Anthony Heath, Legal Contracts and Commercial Team - 27/06/2023

## **8. Procurement comments**

- 8.1 There are no significant 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 is compliant with Public Procurement Regulations and maximising both best value and social value outcomes for the Council.
- 8.2 Any savings from these procurement exercises will (where applicable) be allocated in respect of the Council's corporate savings target for procurement.
- 8.3 For the newly procured framework agreements the final contract value will not be known at the point of award, it has been agreed with the service area that accrued savings will be calculated and recovered annually. Savings in relation to third party call offs will be calculated at the time of award by deducting the actual contract value awarded from the approved budget. Details will be confirmed with the service area at the time of contract award, via the Tender Summary and Decision form.

Sue Oliver, Places Category Manager - 28/06/2023

## **9. Crime and Disorder Implications (If Applicable)**

- 9.1 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.

## **10. Social value considerations (If Applicable)**

- 10.1 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.
- 10.2 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.

## **11. Regard to the NHS Constitution (If Applicable)**

- 11.1 Not applicable.

## **12. Equality Impact Assessment (EIA)**

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

**13. Data Protection Impact Assessment (DPIA)**

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

**14. Carbon Impact Assessment (CIA)**

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

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

15.1 None.

**16. Published documents referred to in this report**

16.1 Highways Annual Procurement Approval report (Commissioning and Procurement Executive Committee – December 2022).



## Appendix 1 - Highway Services - Spend Profile Forecast 2024/25

Highway Services - New Contract Requirements						
Works Category		Category	Works Description	Existing Framework Arrangements	Existing Framework value (£m)	New or Additional Framework arrangements for approval (£m)
1	Planned Carriageway Maintenance	Works	Planning, surfacing, ironworks and small element of maintenance of kerbing and footpaths.	CPU 4622	10.0	15.0
2	Drilling, Sawing & Cutting	Services	To provide drilling, sawing & cutting services to support highways construction activities.	N/A	N/A	0.40
3	Site Surveys (including Ground Rador)	Services	Undertaking of site surveys including ground radar.	CPU 4674	0.10	0.6
4	Weather Data Collection	Services	Weather data collection, monitoring & equipment Maintenance.	N/A	N/A	0.12
						<b>16.12</b>

Highway Services - Access Requirements to Third Party Frameworks						
Works Category		Category	Existing National Frameworks	Existing Framework Arrangements	Existing Framework value (£m)	New or Replacement Framework arrangements for approval (£m)
1	Winter Gritting	Services	ESPO Weather Forecasting Services	ESPO	0.28	0.60
						<b>0.40</b>
<b>Total Forecast Spend (£m)</b>					<b>10.4</b>	<b>16.72</b>

