

CABINET

18 June 2024

Title: Contracts for Highway Maintenance Services	
Report of the Cabinet Member for Public Realm and Climate Change	
Open Report	For Decision
Wards Affected: All	Key Decision: No
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Accountable Director: Rebecca Johnson – Director of Public Realm	
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Summary: <p>The Council has a legal duty as a Highway Authority under Section 41 of the Highways Act 1980 to maintain the highway. It is the duty of the highway authority to “maintain the road in such a state of repair as to be passable in safety at all seasons of the year”. Additionally, maintaining and improving the Borough’s Public Highway assets is a key administration priority directly linked to providing a safe, accessible borough, and our gateway to growth.</p> <p>The current Highway Maintenance Term Contracts expired on 31 March 2024. The intention has always been to let a new, long-term Highway Maintenance contract. However, progress with that procurement was delayed whilst a review of budgetary provision and future funding was carried out against the backdrop of inflationary and cost-of-living increases which are impacting on contractor’s tender submissions.</p> <p>Therefore, this report sets out proposals for a new five year contract, with a further two-year extension option, secured through competitive tendering for best value as well as the direct award of an interim nine-month stop gap contract to the incumbent provider, Marlborough Surfacing Ltd, to maintain service provision through to 31 December 2024, pending the award of the long-term contract.</p> <p>The new long-term maintenance contract will be procured in line with due Procurement process, including a 10% weighting assessment criteria to our Social Values, aligned to the Council’s Social Value Policy (www.lbbd.gov.uk/social-value-policy) and subsequent Social Values Tool Kit, and reiterated in section 2.9.2 of the report.</p> <p>The interim short-term arrangement will align to the Social Values as stipulated in the original Contract award in 2017, and stipulated in 2016 ITT section 10, and monitored under 133AR Performance, 135AR Considerate Construction Scheme and 154AR Recycling/Sustainability and defined further in section 2.9.1, the Living Wage</p>	

commitments made in 2.10.1 alongside the Net Zero Carbon Target and Sustainability outcomes defined in 2.11.1 of the report.

Recommendation(s)

The Cabinet is recommended to:

- (i) Agree the direct award of a short-term, maximum nine-month with Marlborough Surfacing Ltd for the provision of reactive and planned highway maintenance services on the same terms and conditions as the previous contract, including historic defined Social Value outcomes as stipulated in the original contract award, the Living Wage commitments and the Net Zero Carbon Target and Sustainability outcomes as defined in the report;
- (ii) Agree the procurement of a new five year, with a two-year extension option, contract for the provision of reactive and planned highway maintenance services, secured through competitive tendering, complete with a commitment to the Council's Social Values Policy and requirements in accordance with the strategy set out in the report; and
- (iii) Delegate authority to the Strategic Director, My Place, in consultation with the Cabinet Member for Public Realm and Climate Change, the Strategic Director, Resources and the Head of Legal, to conduct the procurement and award and enter into the contracts and all other necessary or ancillary agreements to fully implement and effect the proposals.

Reason(s)

To assist the Council in meeting its statutory responsibilities under Section 41 of the Highways Act 1980 and to accord with the Council's Contract Rules and the Public Contracts Regulations 2015.

1. Introduction and Background

- 1.1 The Council has a duty to maintain the highway in accordance with section 41 of the Highways Act 1980. Which "provides that the Highway Authority is under a duty to maintain the highway. It is the duty of the highway authority to maintain the road in such a state of repair as to be passable in safety at all seasons of the year." Furthermore, the maintenance and improvement of the borough's roads and footways is a key administration priority directly linked to providing a clean safe borough. The Corporate Plan including specific commitments to maintain our roads, pavements and town centres.
- 1.2 To enable it to both comply with the Council's statutory duty to maintain the Highway in a safe condition at all times, as well as to deliver against the Corporate Plan's priorities in this area. The Council needs to have flexible, efficient, effective and sustainable arrangements in place. Whereby it can commission work and repairs on the Highway as and when the needs arise, without the cost and timescales required to procure the work concerned via spot purchasing and/or tendering in every case, as required by the Public Contract Regulations.

- 1.3 Consequently, similarly to other Local Authorities the Council has previously entered into a term highways maintenance contract for civil engineering works, procured in compliance with the Public Contract Regulations. Through which it can place call off orders for any works required in accordance with the terms and conditions of the term contract.
- 1.4 The Councils current Highways Term Maintenance contract was originally awarded for a five-year term on 1 April 2017 to Marlborough Highways Ltd. Following a joint procurement exercise with the London Borough of Havering involving the publication of notices, as then required through the Official Journal of the European Union (OJEU). Within this joint 50:50 procurement exercise with Havering, our contract value was £48.5m.
- 1.5 This contract was extended, using the two-year optional extension clause. Under Delegated Authority by the then Strategic Director of MyPlace, for a period of twenty- four months and this extension expired on 31 March 2024. Currently no specific arrangements are in place and the Council will have to procure any works via alternative Public Contract Regulation (PCR) compliant arrangements, which will be less flexible, more time consuming and attract higher costs as described in more detail within Section 3 (Options Appraisal) of this report.

Short Term Interim Nine-Month Contract

- 1.6 Unfortunately progress in procuring a new Highways Term Civils Maintenance Contract has been severely delayed by numerous issues, beyond our immediate control. Various financial issues and uncertainties (cost of living implication, inflation and viability) combined with the balancing of the Councils own accounts, did not become clear until January 2024. Moreover, the opportunities to explore joint procurement with colleagues in London Borough of Havering have proved fruitless as our contract requirements now vary significantly, due to their documented financial position. The delays arising from issues and uncertainties left insufficient time to procure a new term Highways civils maintenance contract before the expiration of the two-year extension period, at the end of March 2024. With the contract award for a new Term Maintenance Contract not anticipated to take place before Q3 2024/2025. Therefore, the Council requires a means to continue delivering the services during the interim period in accordance with our statutory duties.
- 1.7 Marlborough Highways Ltd performance on the recently expired Term Maintenance Contract, has been monitored through contractual Key Performance Indicators (KPI's) and contract meetings, throughout their contract term. Their performance has always met or exceed the expected standards as set out within the contract. And they have delivered schemes within set timescales, to budget and to a high quality of workmanship using quality materials. Officers have also over this time been able to establish and maintain a positive working relationships with Marlborough Highways Ltd resulting in a contract that has always been delivered very successfully.
- 1.8 As part of the above contract a schedule of works was priced by tenderers in competition against each other. With the contract terms being the NEC3 Term maintenance Contract, a commonly used industry standard form used for procuring construction works of this nature. Over the term of the contract, this schedule of

costed rates has been applied, and adjusted by the Consumer Prices Index (CPI) in accordance with the terms of the contract.

- 1.9 Due to their performance on the recently expired contract early discussions have taken place with Marlborough Highways Ltd who have indicated that they would be open to enter into a nine-month interim contract. Confirming also that they would be amenable to adopting the same set of existing cost rates, works specifications under the same contractual terms and conditions as part of any interim contract. The interim short-term arrangement will align to the Social Values as stipulated in the original Contract award in 2017, and stipulated in 2016 ITT section 10, and monitored under 133AR Performance, 135AR Considerate Construction Scheme and 154AR Recycling/Sustainability.
- 1.10 The cost of the short-term interim contract would be dependent on the works instructed and actually undertaken during the extension period. However, the proposed upper limit of works instructed during the period of the interim contract would be half the works value threshold set under the public contract regulations as of 1 January 2024 [£5.372m]. Therefore anticipated spend would not exceed £2.686m.
- 1.11 This report therefore seeks a waiver of the Councils own contract rules to procure an interim nine-month contract with Marlborough Highways Limited via the Negotiated procurement procedure without prior notification. The award of the interim contract through this route being justified due to the issues set out within paragraph 1.4 above meeting the criteria set out within the Public Contract Regulations 2015 (PCR) paragraph 32(2)(c).

Procurement of a New Highways Civils Term Maintenance Contract

- 1.12 To ensure in the long term that the borough retains suitably efficient, effective and flexible arrangements to enable it to discharge its duties in respect of the S41 of the Highways Act 1980 and any future corporate commitments. Whilst also being able to demonstrate value for money and compliance with the PCR, in respect of the procurement of these works.
- 1.13 It is recommended that the Council procure a new five-year term maintenance contract for Highways Maintenance, again with the option to extend it for two-years. The contract would function as the existing contract, in that under the overall terms of the term contract and against a specification and priced schedule of rates, priced through the procurement process. The new long-term contract will include a 10% weighting assessment criteria to our Social Values, aligned to our Social Value Policy and subsequent Social Values Tool Kit. The Council would place a series of call off contracts or orders under the terms of the term contract as and when it required street lighting works to be undertaken.
- 1.14 This arrangement provides the council with optimum mix of flexibility and control, providing an efficient and effective procurement route in respect of these works. Avoiding the potential administrative burdens, complexities and time consequences that would arise were these works procured as stand-alone spot procurement exercises. Additionally, such a term contract will facilitate the development of a long-term collaborative working relationship between the contractor eventually selected and the Council. Not only will this lead to reduced costs through

economies of scale and administration costs. It will also provide the circumstances to develop a long-term collaborate working relationship with the chosen contractor, focused on building value and improving outcomes.

2. Proposed Procurement Strategy

2.1 Outline specification of the works, goods or services being procured

- 2.1.1 For the nine-month interim contract the specification of the works in place for the recently expired contract will be used.
- 2.1.2 For the proposed new term contract the existing works specification in place under the existing contractor, will be reviewed and updated as required. And a new works specification will be prepared covering the various items of works required to maintain the public highway this will include specification items covering resurfacing (i.e tarmacing etc.), pot-hole repairs, drainage works, concreting, laying paving slabs and kerbs, the installation of street furniture, highway line marking and so on.

2.2 Estimated Contract Value, including the value of any uplift or extension period

- 2.2.1 The value of the nine-month interim contract is £2,686m, to maintain Statutory functions.
- 2.2.2 The estimated works value of the proposed new Highways Term Maintenance Contract would be valued at circa £10m per annum equating to circa £50m over five years or circa £70m in total should the two-year option be initiated. These estimates are defined by historic spends, current budgets alongside anticipated future budget indications.

2.3 Duration of the contract, including any options for extension

- 2.3.1 The duration of the interim highways civils term maintenance contract would be nine-months.
- 2.3.2 The duration of the new highways civils term maintenance contract will be will be five years, extendable by a further two years.

2.4 Is the contract subject to (a) the Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?

- 2.4.1 Both the interim nine-month highways civils term maintenance contract and the procurement of a new five-year highways civils term maintenance contract are subject to the Public Contract Regulations; both being defined as works contracts under the regulations.

2.5 Recommended procurement procedure and reasons for the recommendation

- 2.5.1 The procurement of an interim nine-month highways civils term maintenance contract with Marlborough Highways Ltd via the Negotiated contract without prior

publication procedure is permissible under paragraph 32(2)(c) of the PCR 2015. That a waiver of the Councils own contract rules be granted on the basis that an emergency exists Clause 35.5(a) and that the circumstances of the proposed contract are covered by legislative exemptions clause 35.5(e) for the reasons set out within paragraph 1.4.

2.5.2 It is recommended that the new five-year highways civils term maintenance contract is procured via open tender process on the basis of a term contract, with the tenders being managed via the Council's "Bravo" e-procurement portal. Using a complete set of tender documents inclusive a works specification and schedule of rates.

2.5.3 Various frameworks for the delivery of Highways works do exist as set out within Section 3 Options Appraisal of this report. However, their use is not felt to be the optimal solution in respect procuring much of the work purchased through the term maintenance contract, due to the time scales required to prepare and run mini competitions to select contractors through these frameworks. And whilst a direct award routes under these frameworks do exist, Direct Award could be not used in every case and there is often a need to commission and deliver work against very tight timescales. Additionally, the direct award route would likely have adverse financial consequences as the rates under these frameworks, are known to be higher than under the current term contract. Coupled with the potential complexity of working with multiple contractors simultaneously in respect of the delivery of programmes of highway maintenance and safety works. With the loss of the opportunity to build value through collaborative working with a single contractor in the longer term.

2.6 The contract delivery methodology and documentation to be adopted

2.6.1 The nine-month interim contract will be under the terms of the original contract, specifically the NEC3 Term Service Contract April 2013. Rates/Prices will be as per the Bill of Quantities originally submitted by Marlborough Surfacing Limited in relation to that contract, modified in line with the terms of the expired contract, which will provide cost certainty.

2.6.2 The new Highways Term Maintenance Contract will be procured under the terms of the NEC4 Term Service Contract June 2017.

2.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract

Interim Nine-Month Contract

2.7.1 An interim nine-month contract should deliver the best value for money, Marlborough Contracts Ltd have performed well on the recently expired contract. A Contract Value report on the recently expired contract is available for inspection. It provides commentary on Marlborough's deliverables to date confirming that they have and continued to deliver value for money, high quality workmanship, on time, budget and have an excellent safety record throughout the duration of the contract. If required, a detailed monthly break down document setting out their performance and KPI achieved for the last financial year is available for inspection. The interim short-term arrangement will align to the Social Values as stipulated in the original

Contract award in 2017, and stipulated in 2016 ITT section 10, and monitored under 133AR Performance, 135AR Considerate Construction Scheme and 154AR Recycling/Sustainability.

Procurement of a New Long-Term Contract

2.7.2 As a consequence of awarding the new contract the Council will be in a robust position to comply with its statutory duties under section 41 of the Highways Act 1980. And thus avoid any potential claims and claims for compensation that may arise as a result. Additionally, the new contract will also include robust Contract Management arrangements to ensure value for money is achieved and that works are executed to a high-quality. With specific challenging Key Performance Indicators set around delivery of works on time, to budget, defective work and safety set through the new contract.

2.8 **Criteria against which the tenderers are to be selected and contract is to be awarded**

Interim Nine-Month Highways Civils Maintenance Term Contract

2.8.1 As set out earlier within the report.

Procurement of a New Highways Civils Term Maintenance Contract

2.8.2 Tenders will be assessed on the basis price, quality and social value, on the basis of **60% cost, 10% social value and 30% Quality**. With quality being assessed in relation to each bidders' experience and qualifications of the contractors proposed team and response to specific contract related questions. Social Values will be aligned to the Council's Social Value Policy (www.lbbd.gov.uk/social-value-policy) and subsequent Social Values Tool Kit.

2.9 **How the procurement will address and implement the Council's Social Value policy**

2.9.1 Whilst they were not explicitly contractually required to do so through the recently expired contract, Marlborough Surfacing Ltd are none the less committed to local communities as set out below:

- More than 50% of their directly employed team delivering the services, live within the London Borough of Barking and Dagenham.
- Their team is diverse and reflects the local community.
- In the last six months Marlborough Highways Ltd have employed five local residents who were previously unemployed.
- Each month Marlborough Highways Ltd procure £500,000 of materials from businesses within the London Borough of Barking and Dagenham, inclusive of Asphalt from Eurovia's plant in Chequers Lane, Dagenham.

This commitment would continue throughout the time period of the interim contract.

2.9.2 Through the procurement of the new five-year Highways Term Maintenance contract the new contractor will be required to commit to deliver through the contract, a number of social value outcomes, set within the themes described in the

borough's Social Value Toolkit www.lbbd.gov.uk/social-value-policy. 10% of the weighting in selecting the new contractor will be assigned to Social Value.

2.10 London Living Wage (LLW)

2.10.1 Whilst they were not contractually required to, Marlborough Surfacing Ltd paid the Living Wage during the period of their recently expired contract and have agreed to continue to do so for the duration of the interim contract.

2.10.2 The new five-year highways civils term maintenance contract which it is proposed to procure will contain terms requiring the successfully contractor to pay the London Living Wage (LLW) and sign up to the Unite Construction Charter.

2.11 How the Procurement will impact/support the Net Zero Carbon Target and Sustainability

Nine-Month Interim Highways Civils Term Maintenance Contract

2.11.1 There will be no negative impacts on the Authority entering into the interim contract. The incumbent supplier will continue to deliver against the previous contractual targets, set as part of their recently expired contract.

Marlborough surfacing currently recycle 83% of their excavated highways materials annually, monitoring it on a weekly basis, as detailed below:

Environmental

KPI	April	May	June	July	August	September	October	November	December	January	February	March
Emissions	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2606 Tonnes	N/A	N/A
Recycling	75%	80%	77%	82%	80%	79%	82%	85%	80%	90%	93%	94%

Since April 2022 Marlborough Contracts Ltd have also worked with officers to create their own LBBD Climate Emergency Action plan, to be implemented in respect of the delivery of this contract. They audit and benchmark their carbon emissions, which inform their plan with the aim of reducing and offsetting the impact of their operations in the borough.

This supports the Specialist Services SIP – (Service Improvement Plan), Carbon Reduction objectives which are a key ambition of the service, working with our Term Contractors is essential to the success of our commitments in this area.

Procurement of the New Five-Year Highways Term Maintenance Contract

2.11.2 Tenderers will be asked to provide their environmental credentials which will form part of the qualitative evaluation along with other technical responses. With Tenderers being asked to demonstrate what measures, they propose to take to minimise the production of waste arising from their operations under the contract, and how the remaining amount of waste will be recycled and disposed of. Tenderers will also be

asked to confirm what measures, they propose to take to minimise carbon emissions in their operations, and to generally decrease the carbon footprint of operations.

All tender responses will be evaluated carefully, and the successful bidder will be required to demonstrate proactive, commitments and practical steps taken to improve their environmental policies and practices throughout the duration of the contract.

3. Options Appraisal

3.1 Various alternatives to awarding an interim nine-month contract whilst procuring a new five-year contract were considered. Alongside consideration of whether such a new five-year contract was the optimal procurement solution, as detailed below.

Use current in house DSO resources - There are insufficient resources to carry out all the highway works required. The current DSO Operatives should continue to carry out as much of the works as possible in the same manner they currently do. This can then be supplemented using Marlborough Highways Ltd as is the current practice in the interim period and by the contractor appointed for the new five-year contract in the longer term. Moreover, they do not have the resources or equipment for large scale Capital Delivery projects.

Therefore, this option was considered and rejected.

Do nothing - The current contract expired on 31 March 2024. The Council has a duty to discharge these services and failure to make provision would result in the Council failing to deliver its statutory duty. This is not a viable option and hence, was rejected.

Frameworks - Use of Framework Agreements or signing up to a neighbouring authorities' term contract. 2 frameworks have been explored:

- TFL Construction Framework – offers a resource to maintain our Statutory Duties but has a cost implication with increased rates of working circa 30% uplift compared to the rates on our recently expired contract.
- London Construction Programme (LCP) has our Term Contractor (Marlborough Highways Ltd) on it but is subject to a 0.5% management fee cost and increased specification rates.

Whilst these 2 options maintain our compliance, there would also be issues with different specifications and exceeding contract value thresholds for example, more over we would be getting less value for money, and the LCP would result in a management fee of 0.5% on all commissioned works at increased rates with our existing Contractor Marlborough Surfacing via a separate framework and contracted agreements, reducing money targeted at improving our Highway Assets. Additionally, whilst both frameworks allow for the direct award of work in specific circumstances, the usual route to select a contractor through these frameworks would be via mini competition. Which would be less flexible and responsive requiring longer timescales to procure any work and creating a greater administrative burden.

Retender the Highways Reactive & Planned Maintenance Contract for interim period - The procurement of a new five-year contract was not able to be completed before the current term contract expired. And it would not be reasonable to re tender for the interim period as this would incur additional cost and take resources away from the ongoing procurement of the five-year contract. Additionally, it is anticipated that there would be little uptake in the market given the short period of time of the interim contract and the associated costs, related to preparing a tender for a contract covering such a short interim period.

4. Waiver

4.1 Not applicable.

5. Consultation

5.1 The proposals in this report were considered and endorsed by the Procurement Board at its meeting on 20 May 2024.

6. Corporate Procurement

Implications completed by: Richard Barrett Category Manager

- 6.1 The paper seeks approval to commence procurement via Open Tender of a Highways Term Maintenance Contract with an initial duration of 5 years with the option to extend for an additional 2 years. The Value of the contract is above the Works threshold as defined in the Public Contracting Regulations 2015. The Open Tender route is recommended in the report following consideration and examination of alternative procurement routes. The Open Tender route seems suitable, the weightings described seem appropriate. The previous version of this contract utilised multiple organisations collaborating together that would have leveraged economies of scale to a greater degree, it appears this isn't an option this time. Pre-tendered arrangements (frameworks) have been explored, the conclusions suggest that this will result in an uplift compared to the proposed route forward and existing pay rates. The Authority will only know for certain after receiving proposals from the market if there will be an uplift compared to historic rates or those offered on available Frameworks. It should be noted that the timeframe (six months) to complete an Open Tender for Works of this type and magnitude of project will be challenging for the Authority to achieve. The timeframes will be challenging for the supply market to respond and be geared up to deliver in the event of being successful to commence the provision in Six months, unless they are the incumbent supplier.
- 6.2 The report states that TUPE is not applicable It is imperative that this is confirmed to absolute conclusion prior to commencement of the new tender.
- 6.3 The paper states that the existing contract has already expired, it did so on 31 March 2024 with no further extension available. The paper at 1.4 provides explanatory content of the grounds for the severe delays in procuring a new Highways Term Civil Maintenance Contract for consideration.
- 6.4 Due to those issues, the paper also seeks a waiver of the Councils Contract Rules and proposes a six-month interim direct award of an arrangement capped at a value

of £2.686m. The interim direct award would be to the existing supplier which is likely to be on the terms of the expired contract, but this doesn't seem to be a definitive certainty. The interim arrangement is a necessity to cover the out of contract period and so that the Council can continue to fulfil statutory duties during the interim period while the Open Tender is completed.

- 6.5 As identified elsewhere, the six-month time frame will be challenging, for the Authority and Suppliers. However if allowing additional time to complete the tender, ie. a 9 month period, this will result in an increase in the duration of the proposed interim award under waiver and the associated value of the Interim contract.
- 6.6 The situation outlined in the paper, the proposed approach in the paper and all alternative routes forward discussed with officers all expose the Council to risk. In considering whether to agree the recommendations set out in the report, parties need to be satisfied that the levels of risk are acceptable to the organisation before providing approval.

7. Financial Implications

Implications completed by: Sandra Pillinger Finance Manager

- 7.1 This report proposes to extend the current Highways maintenance contract with Marlborough Highways for 6 months from 1 April 2024 to 31 March 2025, whilst reprocurement of a new contract is underway. The maximum permissible value of the contract under public procurement regulations is £2.686m or £2.238m exclusive of VAT. The existing schedule of rates will be used. The contract will be closely monitored to ensure the threshold is not exceeded.
- 7.2 It is also proposed to re-procure a new highways term contract for a period of 5 years with an option to extend for a further two years. The estimated value of the contract over the 7-year period is £70m.
- 7.3 The expenditure under both the contract extension and the reprocured contract will be mainly capital expenditure although there will be some revenue costs. The contract will be financed from various sources and will be managed within the available funding allocations. The allocations for 2024/25 are set out below. Funding allocations for future years are not yet confirmed.

Highways Funding for 2024/25

Highways Investment Programme (Council-funded) £4.9m capital

Department for Transport £171k capital

Transport for London LIP £4.9m capital and revenue

Reactive Maintenance £0.5m revenue

8. Legal Implications

Implications completed by: Yinka Akinyemi, Contracts Solicitor - Law and Governance

- 8.1 This report is seeking to retrospectively waive the Council's Contract Rule 10.2, requiring a tender process to be conducted, for the reasons set out in the body of the report, allowing the Council to direct award an interim twelve-month Highways

Civils Term Maintenance Contract to Marlborough Highways Ltd for a total contract value of £5,372m utilising the negotiated procedure without prior publication procedure so as to cover the intervening period and enable the Council to continue to discharge its duties as set out in this report.

- 8.2 It is noted that the value of the contract is at the limit of the threshold for works as set out in the Public Contracts Regulations 2015 (PCR 2015) . This means that there is a legal requirement to competitively tender the contract.
- 8.3 This report states that a waiver is sought on the ground contained in clause 32(2)(c) of the Public Contracts Regulation 2015. The report author has been advised that proceeding on this ground will expose the Council to significant procurement risks, however, the report author is fully satisfied that there is a robust justification to proceed on this basis.
- 8.4 In addition, this report states that a waiver is also sought on the ground contained in clause 35.5(a) of the Council's Contract Rules: "That an emergency situation exists." and clauses 35.5(e) of the Council's Contract Rules: that the circumstances of the proposed contract are covered by legislative exemptions. The Contract Rules do provide for Chief Officers to waive the requirement to tender for contracts on any one of several grounds set out in Contract Rule 35.5 .Each ground is however subject to the proviso that the appropriate decision-maker considers that no satisfactory alternative is available, and it is in the Council's overall interests. In considering whether to agree the recommendations set out above in this report, the Chief Officer needs to satisfy him or herself that the reasons provided, and grounds stated by officers are satisfactory.
- 8.5 The Report is also seeking for the Cabinet to approve the procurement of a new five-year Highways Civils Term Maintenance Contract with an option to extend it by two years for the estimated works value would be £70m.
- 8.6 It is anticipated that the estimated value of the contract is in excess of the threshold for works under the PCR 2015 and therefore a competitive tendering process will be required, which will be subject to the full application of the Regulations.
- 8.7 Clause 2.5.1 of this report states that an open tender exercise will be carried out in compliance with PCR 2015. This will therefore be following a compliant tender process as required by law and also the Council's Contract Rules.
- 8.8 Contract Rule 6.5 of the Council's Contract Rules requires that all procurements of contracts above £500,000 in value must be submitted to Cabinet for approval.
- 8.9 In line with Contract Rules 6.5 and 10.2, Cabinet can indicate whether it is content for the Chief Officer to award the contracts following the procurement process with the approval of Corporate Finance

9. Other Implications

- 9.1 **Risk and Risk Management** - There are two principle short term risks associated with the recommendations of this report.

Firstly, that the borough will not be in a sufficiently robust position to comply with its obligations to maintain the safety of the highway as per S41 Highway Act 1980 and thus may be exposed to legal claims as well as adverse publicity. Therefore, the recommendation of this report to enter into an interim term maintenance contract is intended to mitigate that risk over the next nine months. With the intention that this potential risk is mitigated in the longer term through the procurement of a new five-year term maintenance contract, inclusive of the option to extend it by a further two years.

And secondly there is the risk of procurement challenge either related to the decision to enter into the nine-month interim contract and/or at some point during the process of procuring the new five-year Highways Term Maintenance Contract. In relation to the risk of challenge as to the interim contract, we have carefully considered the grounds through which the negotiated contract without prior publication procedure route may be used and taken legal and procurement advice as detailed within this report. We believe we have a robust justification and as such consider the risk of successful challenge low. In relation to the procurement of the new five-year highways civils term maintenance contract. The intention is that the procurement exercise will be undertaken in strict compliance with the requirements of the PCR 2015, hence affording any potential claimant no realistic grounds to launch such as challenge and mitigating the risk of a successful challenge.

- 9.2 **Corporate Policy and Equality Impact** – There are no specific corporate policy or equality impacts associated with the award of an interim contract or a new five-year highways civils term maintenance contract.

However, borough roads, streets and pavements create crucial transport routes and nodes throughout the borough. A failure to properly maintain this infrastructure could lead to failures and road closures being implemented. Potentially resulting in communities becoming gridlocked with stationary traffic, negative air quality implications, road safety concerns with resident's quality of life hindered. Causing economic disruption to the borough, with detrimental financial impacts on both local businesses and residents. Alongside with the damage to the Council's reputation, it is likely that these impacts would not fall evenly across the borough's population. With many of the borough poorest and most vulnerable residents being more significantly affected.

- 9.3 **Business Continuity / Disaster Recovery** - The entering into an interim nine-month contract will enable the borough to continue to comply with its obligations to repair and maintain the highway under section 41 of the Highways Act 1980 as well as continuing to deliver against its corporate objectives. The award of the five-year contract in respect of these works with the option to extend the contract by a further two years will ensure that the Council can continue to do this in the longer term.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None