

CABINET

18 June 2024

Title: Contracts for Street Lighting 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	
Accountable Executive Team Director: Leona Menville – Strategic Director My Place	
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”. Part of this duty includes the maintenance of all electrical equipment and street lighting to British Standard requirements for Electrical Installations BS 7671 (2018). Additionally, maintaining and improving the Borough’s Street lighting is a key administration priority directly linked to providing a safe borough and reducing the fear of crime.</p> <p>The current Street Lighting Term Contracts expired on 31 March 2024. The intention has always been to let a new, long-term Street Lighting 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, Volker Highways 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 contract with Volker Highways Ltd for the provision of reactive and planned street lighting 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 street lighting 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." Part of this duty includes the maintenance of all electrical equipment and street lighting to British Standard requirements for Electrical Installations BS 7671 (2018). Additionally maintaining and improving the borough's street lighting is a key administration priority directly linked to providing a safe borough and reducing the fear of crime.
- 1.2 To enable it to both comply with the above statutory duty and its commitments. The Council needs to have flexible, efficient and effective arrangements in place, which none the less demonstrate value for money. Whereby it can commission electrical work and repairs to street lighting 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.

- 1.3 Consequently, the Council has previously entered into a street lighting term maintenance contract, procured in compliance with the Public Contract Regulations. Through which it can place call off orders for any electrical works and repairs required in accordance with the terms and conditions of the term contract.
- 1.4 The Councils current street lighting term maintenance contract was originally awarded for a five-year term on 1 April 2017 to Volker Highways Ltd. Following a procurement exercise involving the publication of notices, as then required through the Official Journal of the European Union (OJEU). The full detail of the award is set out in the Cabinet report of 16th August 2016. The contract value was £7million.
- 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 street lighting Term maintenance contract has been severely delayed by numerous issues, beyond officers' immediate control. With delays arising due to uncertainties regarding the Councils financial position and future highway maintenance budgets. Combined with wider economic uncertainties around inflation and viability within the construction industry coupled with the impact of the wider cost of living crisis. These issues and uncertainties did not become sufficient clear until January 2024, to enable us to progress the procurement of a new contract. Which has left insufficient time to procure the new street lighting term maintenance contract before the expiration of the two-year extension period, at the end of March 2024. With the contract award for a new street lighting 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 their statutory duties and broader political commitments.
- 1.7 Volker Highways Ltd performance on the recently expired street lighting term maintenance contract, has been monitored through contractual Key Performance Indicators (KPI's) and contract meetings, throughout the 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 Volk's Highways Ltd. Volk's Highways have also worked well alongside the Councils other highways maintenance contractors, resulting in a contract that has always been delivered very successfully.
- 1.8 As part of the original procurement 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 electrical engineering 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. And these arrangements would continue to be applied during any extension. In accordance with the terms of the original contract.

- 1.9 Early discussions have taken place with Volkers Highways Ltd who have indicated that they would be open to entering into an interim nine-month contract. The Contractor has also indicated that they would be amenable to adopting the same set of existing cost rates, using the same works specifications under the same contractual terms and conditions as part of the 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 new interim contract would be dependent on the works instructed and undertaken during the interim period. However, an upper limit of works instructed during the period of £0.5m is proposed.
- 1.11 This report seeks therefore seeks approval to procure a nine-month interim contract with Volker Highways Limited. The interim procurement being procured following the Negotiated contract without prior notification procedure as set out within paragraph 32(2)(2)(c) of the Public Contract Regulations 2015 (PCR). The maximum value of the extension value would be £0.5m and the extension would be reviewed in three months. This extension providing the necessary time and flexibility to complete the procurement and award of a long-term replacement term maintenance contract. And that consequently 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).

Procurement of a New Street Lighting 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 S41 of the Highways Act 1980 inclusive of all electrical equipment and street lighting being maintained to British Standard requirements for Electrical Installations BS 7671 (2018). Whilst continuing to deliver against corporate commitments relating to providing a safe borough and reducing the fear of crime. While also being able to demonstrate value for money and compliance with the PCR, in respect of the procurement of these electrical engineering works.
- 1.13 It is recommended that the Council procure a new five-year term maintenance contract for Street Lighting Maintenance, again with the option to extend it for two-years. This new contract would function the same as the recently expired and interim contracts, 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 will provide the council with optimum mix of flexibility and control, providing an efficient and effective procurement route in respect of these electrical works. Avoiding the potential administrative burdens, complexities and time consequences that would arise were these works procured as stand-alone or spot procurement exercises. Additionally, such a term contract will facilitate the development of a long-term collaborative working relationship between the contractor eventually selected, the Council and other contractors the Council contracts with to maintain the highway. 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 purposes of the interim nine-month contract, to expedite the procurement of this contract. The recently expired contract specification, alongside it terms and conditions of contract would be used.
- 2.1.2. For the new Street Lighting Term contract, the current contract specification is being reviewed. Alongside a wider review based on market intelligence, both these exercises will be used to update and modernise the current specification prior to tenders being invited, to ensure it is updated to suit the Councils current and longer term anticipated future requirements.

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

2.2.1 The estimated expenditure during the proposed nine-month interim contract period would be £0.5m to maintain Statutory functions as broken down below.

Current Spend Breakdown Predictions:

	2024/2025
Street Lighting Maintenance	£200k
Estimated TFL/Capital funded Projects	£300k
Total Forecast	£500k

- 2.2.2 These costs would only be incurred as and when call off contracts or orders were placed under the term contract as and when needs arose.
- 2.2.3 The estimated works value of the proposed new Street Lighting Term Maintenance Contract would be valued at circa £1.4m per annum equating to circa £7m over five years or circa £10m 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 contract would be nine-months, with break clauses in three months.

2.3.2 The duration of the new Street Lighting Term Maintenance Contract 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 procurement of a nine-month interim street lighting term maintenance Contract and the procurement of a new five-year street lighting term maintenance contract are both subject to the Public Contract Regulations, being defined as works contracts under the regulations. Neither is subject to the Light Touch regime.

2.5 **Recommended procurement procedure and reasons for the recommendation**

2.5.1 Section 41 of the Highways Act 1980 places a duty on the highway authority to maintain the highway at public expense. This duty includes the obligation to maintain, repair and replace street lighting across the on accordance with the British Standard Requirements for Electrical Installations BS 7671 (2018). Additionally maintaining and improving the borough's street lighting is a key administration priority directly linked to providing a safe borough and reducing the fear of crime.

2.5.2 The recommended procurement procedure for the nine-month interim Highways Street Lighting Term Maintenance Contract is the Negotiated procedure without prior publication as set out within paragraph 32 of the PCR 2015. It is proposed to negotiate the contract with Volkers Highways Ltd. The procedure being justified on the grounds of urgency paragraph 32(2)(c).

2.5.3 It is recommended that the new five-year Highways Street Lighting 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.

2.5.4 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 electrical engineering work purchased through the street lighting term maintenance contract, due to the time scales required to prepare and run mini competitions to select contractors through these frameworks. And whilst 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 these electrical works 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 interim nine-month contract will be under the terms of the original contract - NEC3Term Service Contract April 2013. Rates/Prices will be as per the previous contract Bill of Quantities originally submitted by Volker Highways or modified in line with the original contract during its time, this will provide cost certainty.

2.6.2 The new five-year street lighting 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 The nine-month interim contract should deliver the best value for money, Volker Highways Ltd performed well on the recently expired contract. Delivering value for money, high quality workmanship, on time, budget and have an excellent safety record. 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 contract will have identical specifications and performance requirements and will ensure that the Council continues to be able to maintain, repair and replace street lighting, illuminated signs and associated electrical equipment during the period of the contract extension. 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 specifically to maintain, repair and replace Street Lighting, Illuminated Signs and Associated Electrical Equipment as it may need to do so during the term of the contract. 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 Street Lighting Maintenance Term Contract

2.8.1 As set out within the body of the report.

Procurement of a New Street Lighting 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**

Interim Contract

2.9.1 There will be no negative impact on the Council by entering into a nine-month interim contract. The incumbent supplier will deliver services to the same specifications and standards, on identical contractual conditions and with the same contract monitoring arrangements in place as for the recently expired contract.

Procurement of a New Street Lighting Contract Term Maintenance Contract

2.9.2 Through the procurement of the new Five-Year Street Lighting 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. 10% of the weighting in selecting the new contractor will be assigned to Social Value.

2.10 **London Living Wage (LLW)**

Extension of the Existing Street Lighting Term Contract

2.10.1 The nine-month interim contract will include identical terms requiring that the contractor pay the London Living Wage as the recently expired contract did.

Procurement of a New Street Lighting Term Maintenance Contract

2.10.2 The new street lighting 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**

2.11.1 The nine-month interim contract will include identical terms requiring that the contractor support the Councils Net Zero Carbon and sustainability targets as the recently expired contract.

Procurement of a New 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 Other options considered and rejected:

Use current in house DSO resources - There are insufficient resources to carry out all the street lighting and in particular large scale capital 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, with the support of external resources.

Therefore, this option was considered and rejected.

Do nothing - The current street lighting term 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. Whilst there are no specific street lighting frameworks, that officers have been able to identify. Two frameworks which allow the procurement of street lighting as a wider package of highways works have been explored:

- TFL Construction Framework – offers a resource to maintain our Statutory Duties but has a cost implication and increased rates of working circa 30% uplift.
- London Construction Programme (LCP) has our Term Contractor 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 be issues with different specifications and exceeding contract value thresholds for example, more over the Council would not be getting value for money.

None of the contractors on the above two frameworks would undertake the electrical work directly themselves. They would simply sub-contract the electrical works, adding their overheads and profit to the cost of the sub-contracted work. In the scenario where various highways works are being procured, of which street lighting forms a part of the scope of works. Such an approach would provide value for money. As the framework contractor(s) add value through the management and co-ordination of the various areas of works. But this would not be the case in these circumstances as we would be solely procuring street lighting.

The LCP would result in a management fee of 0.5% on all commissioned works. And the rates under both frameworks are higher than the rates under our existing term contract. Thus, reducing the impact of the money targeted at improving our Highway Assets on the physical condition of the 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 whilst creating a greater administrative burden.

Re-tender the Street Lighting Maintenance Term Contract for interim period -

The procurement of a new contract has not been completed and a new contract been awarded before the term contract expired. It would not be reasonable to re-tender for the interim contract as this would incur additional cost and take resources away from the ongoing procurement of the longer-term contract. Additionally, it is anticipated that there would be little uptake in the market for an interim contract of nine-months from contractors, given the short period of time set against the costs of submitting a tender for such a short duration contract in this area.

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. 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 at 1.3 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 contract for consideration.
- 6.4 Due to these issues, the paper also seeks a waiver of the Council's Contract Rules and proposes a six-month interim direct award of an arrangement capped at a value of £0.5m. The interim direct award would be to the existing supplier which is likely to be on the terms of the expired contract. 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 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 a new Street Lighting maintenance contract with Volker Highways Ltd for 6 months from 1 April 2024 to 30 September 2024, whilst procurement of a new longer-term contract is underway. The estimated maximum value of the contract is £0.5m. The existing schedule of rates will be used.
- 7.2 It is also proposed to re-procure a new Street Lighting maintenance 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 £7m.
- 7.3 The expenditure under both the interim 6 -month contract and the longer-term contract will be a mix of capital and revenue expenditure. Cost will be financed from the Street Lighting revenue maintenance budget of £400,000 and TfL capital funding. Costs are indicative, based on scheme deliverables and TfL allocations.

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 Street Lighting Term Maintenance Contract to Volker Highways Ltd for a total contract value of £500,000 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 below the threshold for works as set out in the Public Contracts Regulations 2015 (PCR 2015) this means that this contract should be competitively tendered as set out in the Council's Contract Rules and the Public Contracts Regulation 2015 (PCR 2015).
- 8.3 This report states that a waiver is sought on the ground contained in clause 32(2)(c) of the PCR 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 6.6. 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 Street Lighting Term Maintenance Contract with an option to extend it by two years for the estimated works value would be £7 million.
- 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 PCR 2015
- 8.7 Clause 2.5.3 of this report states that an open tender exercise will be carried out in compliance with the 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 that the borough will not be in a sufficiently robust position to comply with its obligations to maintain the street lighting on 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 procure an interim contract using the negotiated contract without prior publication procedure is intended to mitigate that risk over the next twelve 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.

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 within the PCR 2015 under which the Negotiated contract without prior publication procedure may be used and taken the 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 street lighting 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 equality impacts associated with the award of either contract. However, providing a safe borough and reducing the fear of crime, are key commitments. Both of which good quality well maintained street lighting makes a significant contribution towards.
- 9.3 **Crime and Disorder Issues** - Good quality well maintained street lighting makes a significant contribution toward the reduction of crime in many areas and the perception of the risk of crime. Thus, reducing the fear of crime in many communities.

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

List of appendices: None