

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet

Date: 06/02/2023

Subject: Highway Maintenance Contract – Framework Extension

Report of: Councillor Sharon Holder, Cabinet Member for Public Realm

Report author: Ian Hawthorn – Assistant Director Environment Projects and Highways

Responsible Director: Bram Kainth – Strategic Director of Environment

SUMMARY

The Council has a statutory duty to maintain the highways that are maintainable at the public expense under Section 41 of the Highways Act 1980. The Council's current contracts for paving, asphalt surfacing, highways projects, highway bridges and structures, and highway lighting maintenance and renewals were awarded to FM Conway Limited for a 5 year period, and are due to expire on 31 March 2023. However, the contract awards provided for a 3 year extension period (to 31 March 2026), with annual contract reviews.

The construction industry is currently subject to volatile and increasing costs resulting from the current economic climate (notably high inflation, increased fuel costs and the conflict in Ukraine affecting supply). Despite this, the Council has successfully negotiated discounts with the contractor, if it chooses to extend the existing contracts. As such, this report seeks to activate the 3 year contract extension periods for all five existing FM Conway highways maintenance contracts, in order to mitigate against expected contract cost increases and to enable the full reprocurement strategy for highways works to be developed and agreed before March 2026.

RECOMMENDATIONS

1. To note that Appendices 1 and 2 are not for publication on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).
2. To approve three-year extensions of the five highways contracts for FM Conway from 1 April 2023 to 31 March 2026 (with annual reviews presented to the Cabinet Member for Public Realm), at a maximum estimated contract value of £45m (£15m per year).

3. To begin work on a procurement strategy for the provision of Highways works beyond the end of the current framework arrangement (from April 2026).

Wards Affected: All

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	Highway works on the public realm have a major impact on all residents as well as businesses in the borough. Having a contractor that can deliver on a range of Council commitments is key to building prosperity.
Creating a compassionate council	The current contractor is aligned with core values and has several social value schemes that deliver on inclusion, the environment and looking after the most vulnerable.
Doing things with local residents, not to them	Engagement is a key part of the works undertaken, in terms of both design and implementation. Co-production plays a key role in the contractor's delivery of works across the borough.
Being ruthlessly financially efficient	The current market is unstable with volatile and increasing prices. Despite this the Council has successfully negotiated a number of discounts as part of the proposed contract extensions.
Taking pride in H&F	The works delivered under these contracts are key to maintaining an excellent public realm, creating pride in local areas across the borough.
Rising to the challenge of the climate and ecological emergency	The current contracts have delivered a number of green schemes, including recycling materials removed from roads, installing new electric vehicle charge points, using green materials and helping to deliver flood risk schemes.

Financial Impact

Given the current economic climate and the adverse impact that this is having on the construction industry, extending the contracts as permitted will mitigate against the expected cost increases from reprocurring at this time (a number of other London boroughs are currently seeking or agreeing extensions to their highways maintenance contracts, rather than going to the market at this time). Despite these increasing costs, the Council has successfully negotiated a number of cost discounts if the contract extensions are agreed (see appendix 1). This, along with some

benchmarking of proposed costs, provides some reassurance that the proposal to extend the contracts offers best value in the context of the current volatile market. Additionally, officers work closely with the current contractor to manage works within budget (planned footway and carriageway works undertaken to date in 2022/23 have been completed at 13% less than budget).

It should be noted that there is no minimum level of works committed to as part of the existing and recommended contract extension. As such, highways works are scalable depending on the level of funding available in any given year, which can fluctuate as external grant funding fluctuates (e.g. funding from Transport for London or developer contributions). The estimated maximum spend across all five contract areas is £15m per year, giving a maximum estimated contract value of £45m for all three contract extension years.

Kellie Gooch – Head of finance (environment), 22 December 2022.

Verified by Andre Mark – Head of Finance (Strategic Planning and Investment) 22 December 2022

Legal Implications

The Council has a statutory duty to maintain the highways under the Highways Act 1980. These contracts are to enable it to undertake that statutory obligation.

The Public Contracts Regulations 2015 (PCR) apply to these contracts and they are therefore subject to the advertising and competition requirements set out in the regulations. Extensions to contracts subject to the PCR can only be made if they fall within one of the exceptions listed in regulation 72.

These contracts can be extended under regulation 72(1)(a). This allows for contracts to be modified when such modifications are provided for under the terms of the contract. The clauses permitting modification need to be precise and unequivocal and must not alter the overall nature of the contract. There are clauses in the current contracts which meet these tests.

These are high value contracts under the Council's Contract Standing orders. Extensions to such contracts can only be granted if they fall within one of the exceptions set out in regulation 72 of the PCR. For the reasons stated above these extensions are permitted under regulation 72.

John Sharland, Senior solicitor (Contracts and procurement) 22 December 2022

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Proposals and Analysis of Options

1. The current highways maintenance works contracts provide for the construction of civil engineering works on highways, including carriageway and footway surfacing, paving, maintenance repairs and renewals and highway drainage repairs. The contracts also provide for the construction of highway improvements to modernise the highway in keeping with policy objectives and the statutory function as the Highway Authority. Additionally, they provide for undertaking highway drainage repairs and improvements, introducing traffic management schemes, and developing and implementing public realm schemes and projects, including greening programmes and Clean Air Neighbourhoods. The current contracts also enable the Council to construct new access junctions and make changes to the highway to fulfil legal agreements with developers. Importantly, the current contracts allow the Council to meet its statutory duty to maintain the H&F highway network in a safe condition through ongoing planned and reactive maintenance. The majority of highways maintenance works are currently delivered through five 5 year contracts with FM Conway Limited, ending on 31 March 2023, but with the option of a further 3 year extension for each contract to 31 March 2026.
2. It is proposed to continue with the current arrangements and activate the permitted 3 year contract extension periods for the following five existing FM Conway highways maintenance contracts:

Service area	Notional annual sum £000
<ul style="list-style-type: none"> • Highways Asphalt Surfacing - Carriageway resurfacing programme and project works - planned inlay, overlay and patching schemes requiring machine lay surfacing. 	2,000
<ul style="list-style-type: none"> • Highway Paving Works - Footway reconditioning schemes and project works - planned footway schemes to replace or recondition footways, kerbs and edgings. 	2,000
<ul style="list-style-type: none"> • Highway Projects Works - Civil Engineering Schemes / Projects – Schemes delivered by Highways or Traffic Services, junction upgrades, cycleways and public realm schemes. Including drainage and specialist lighting schemes. 	10,000
<ul style="list-style-type: none"> • Highway Lighting Maintenance and Renewals – Street Lighting replacements and maintenance. Road Markings – provision of road markings for new and refresh works, parking enforcement, and schemes. 	500
<ul style="list-style-type: none"> • Highways Bridge and Structures - Structures and bridge works – Inspections, repairs and replacements to structures. 	50

3. A key component of the contract is that no work is guaranteed (no minimum spend thresholds are set). The commissioning of work is subject to numerous factors, including but not limited to the availability of funding.
4. The following factors have been considered in support of extending the existing contract:
 - The current economic environment with the cost-of-living crisis and the conflict in Ukraine has had a major impact on the construction industry, causing volatile

and increasing prices (see appendix 3). It is expected that procurement on the open market at this time will lead to increased contract prices. Many other London boroughs are currently seeking or agreeing extensions to their highways maintenance contracts, rather than going to the market at this time.

- Despite volatile market prices H&F's current works prices remain competitive compared to other contractors and boroughs. Additionally, the Council has successfully negotiated a number of discounts with the current contractor if it agrees to the permitted contract extensions (see exempt appendix 1).
 - The current contractor supports social value, including employing local people, running a successful apprentice scheme and Highways academy (with attendees from the White City estate), running internal modern slavery initiatives, leading the industry in response to mental health issues (including allowing HR officers from H&F free training on Mental Health First Aiders course), as well as embracing co-production (see exempt appendix 2).
 - The current contractor is fully committed to H&F's Climate Change agenda, including initiatives of developing its own recycling plant, recycling 96% of all the materials taken from H&F highways, using electric vehicles including a digger and grab lorry, using cargo bikes for local deliveries (especially on the Hammersmith Bridge project), and creating a carbon sheet, including a dashboard, on works being done in H&F (see exempt appendix 2).
5. If the extension is approved work will begin immediately on exploring the options available for a new highways maintenance contract from April 2026. Procurement options could include developing a H&F only contract or an existing or new framework with others (e.g. with the WLA).

Reasons for Decision

6. At this point in time with high inflation, increased fuel costs and the cost-of-living crisis it is expected that best value can be achieved by extending the existing contracts to mitigate against likely cost increases from procurement at this time. An extension will also allow time for the future procurement strategy for highways works to be developed and agreed before April 2026.

Equality Implications

7. The Construction (Design and Management) Regulations 2007 require the Council to consider all users of the highway when undertaking works to highways maintained at the public expense. As such, equality standards are written into all highways contracts. Staff undertake co-production training and disability awareness courses to ensure the delivery of accessible infrastructure, including when works are being undertaken.

Risk Management Implications

8. The report appropriately considers risk issues in the analysis and agree it would seem prudent to opt for a planned and considered tender process by activating the extensions to both mitigate and realise risks and opportunities a more stable economic and geopolitical situation may enable.

Ray Chitty, Head of Insurance Service, 19 December 2022

Climate and Ecological Emergency Implications

9. The current contractor has set out to deliver several initiatives as set out in Appendix 2. This includes delivering workshops and working closely with the climate change team on carbon reduction calculators for highways works.

Hinesh Mehta, Climate change Lead, 19 December 2022

LIST OF APPENDICES

Exempt Appendix 1 – Industry context and proposed discounts

Exempt Appendix 2 – FM Conway social value offer

Appendix 3 – Construction industry current and pending price changes