

**REPORT TO:** Executive Board Sub Committee

**DATE:** 2 April 2009

**REPORTING OFFICER:** Strategic Director Environment

**SUBJECT:** Extension of Term Contract for Highway Maintenance

**WARDS:** Borough wide

## **1.0 PURPOSE OF THE REPORT**

To consider the extension of the current Highway Maintenance Term Contract with Amey LG beyond 2010, as conceived in the original tender documents.

## **2.0 RECOMMENDATION: That**

**The Highway Term Maintenance Contract 2005 to 2010 with Amey LG (formerly Amey Infrastructure Services Ltd.) is extended for a period of three years to 31 March 2013 with the option to extend the contract for up to a further two-year period by agreement and subject to continuing satisfactory performance.**

## **3.0 SUPPORTING INFORMATION**

### **3.1 Introduction**

At its meeting of 24<sup>th</sup> January 2005, the Executive Board Sub Committee resolved to award the Highway Maintenance Term Contract (HMTC) for an initial period of five years to Amey Infrastructure Services Ltd. (now Amey LG). The report noted that the tender documents had identified the option to extend the duration of the Contract by five years by agreement of the parties. This procurement strategy was identified in the original European Journal OJEU notice and was designed to maximise value for money from the contract by offering a reasonable term over which contract set-up, overhead and operational costs could be recovered.

The HMTC has now operated for four years and a decision is now required on whether the contract is extended in accordance with the original strategy or whether a new contract is procured. Amey LG have written to us formally, confirming their desire to extend the current contract and to continue to develop the partnership with the Council. This report considers the extension of the contract and other options, which have been explored.

### **3.2 Contract Background**

The HMTc is based upon the Engineering and Construction Contract (ECC), one of the modern forms of contracts and takes the form of a schedule of rates covering most typical highway operations, principally:

- Reactive maintenance and repair of all highway features
- Gully emptying and drainage repairs;
- Footway and carriageway structural reconstruction.
- The winter maintenance function.

The 'indicative' value of the contract is £1.6m per annum, although typically around £2.5m worth of work is undertaken by Amey LG each year. The HMTc is designed to ensure that the Contractor can sustain sufficient resources to deliver not only the core highway maintenance operations but also an emergency response facility 24 hours per day, 7 days a week.

Rates contained in the contract are reviewed and adjusted annually to allow for inflation using standardised construction price and cost indices published by the Government (BERR Department). This mechanism ensures that variations of prices used across the Contract term are applied fairly and reflect actual cost changes in the industry.

### **3.3 Amey's Contract Performance**

The HMTc contains a number of performance indicators against which the contractor is measured on a monthly basis:

- Speed of response to emergency calls is a Local Performance Indicator monitored against the service plan. This indicator consistently achieves 98% of emergency repairs carried out within 24 hours.
- The percentage of works completed on time has improved over the course of the contract and for the last quarter has exceeded 90%
- A system of defaults is in operation, relating to poor performance in terms of response & delay, adherence to specification, courtesy and health & safety. The Department has rarely needed to invoke these defaults.

Amey LG provide a workforce comprising approximately 25 operatives plus administrative and support staff operating from a dedicated depot located in Widnes. They are a national company with resources that can deliver all necessary labour, plant and equipment. Health and safety performance is reviewed monthly by the Contract Administrator as part of the Contract progress meeting. Amey's performance has been excellent in terms of reportable accidents and a continual programme of training and updating of operatives skills aims to continue the trend.

### **3.4 Option Analysis**

If the option to extend the current contract were not taken up, then the Council would have to find an alternative way of delivering the highway maintenance service. A number of options have been considered:

### **3.4.1 Collaboration with neighbouring Authorities**

Neighbouring Authorities on Merseyside have similar term contracts for highway maintenance functions within their areas. All six authorities use different contractors operating from dedicated depots within their boundaries. Collaboration with one or more of our neighbours is feasible but would require either:

- Negotiating a 'geographical' extension of an existing contract to include works in Halton. This route is likely to be fraught with legal and operational difficulties and has therefore been discounted.
- Collaboration with neighbours on a newly prepared term contract designed to provide highway maintenance services across highway authority boundaries. Unfortunately, none of the Merseyside authorities have contracts whose duration and commencement date currently coincides with that of Halton's and of course it is of prime importance that we ensure continuity of provision of vital highway services. It would be possible to extend the current contract for a period that would enable a collaborative, cross boundary approach in the future and this option is discussed further in 3.5 below.

### **3.4.2 Inviting 'Spot' Tenders**

It would in theory be possible to deliver programmed structural maintenance works by means of spot tenders for individual schemes. This would require repetitive annual procurement processes involving the preparation of tender documentation, tender list selection and tender evaluation / contract award. This method of procurement would be an inefficient use of resources and would be unlikely to produce a financial saving.

In addition, this method of contract delivery does not suit non standard and emergency works, which are a vital part of the highways service. Minor highway repairs and patching are not normally elements that deliver profit margins sufficient to be attractive to contractors and it may prove difficult to obtain sufficient numbers of tenderers interested in this type of work alone.

### **3.4.3 Procure a new Term Contract**

The procurement of a new highways term maintenance contract would involve several stages including the drafting of fresh tender documentation, tender selection and vetting process (which due to the contract value would mean advertisement in the European Journal), invitation of tenders and administration of the tender process, adjudication (financial and quality) of tenders and the contract award and mobilisation process. Each of these stages are time consuming and costly and it is for this reason, that the current contract was tendered on the basis of a five year term with an option to extend.

On the basis of past experience, it is estimated that the full procurement process, from pre tender qualification to award, would take around seven months and would require the combined efforts of between two and three members of staff to prepare and administer the tender process. The timetable to have a new contract in place and a contractor mobilised by April 2010 is extremely tight.

In the current financial climate it is difficult to predict whether any real financial benefit would accrue as no guarantees can be made as to the new rates being more attractive than those already in the current contract. However, the Council would be in a position where it would have to accept the tenders received, in order to have a contractor in place by April 2010, regardless of value for money or that current quality would be maintained. In addition, there would be time required to build a working relationship with the new contractors staff and operatives.

### **3.5 Extension of current Contract:**

In 2005 when the current HMTC was awarded, the rationale of a 5 year term with option to extend for a further 5 years was considered to offer the most effective method of procuring highway maintenance services. Over a four-year period, the current contract has successfully delivered the operational result that the Council requires. Amey's contract management staff and operatives are familiar with the operational requirements of the contract and have established a successful working relationship with Halton. They currently employ a significant number of staff and operatives locally and the contract is underwritten by a supply chain of goods and services much of it locally sourced. A new contract would see these relationships severely disrupted until new arrangements were fully established.

In confirming that they would like to extend the current contract beyond 2010, Amey LG have offered to explore with us, further efficiency savings that might be delivered through the Contract. Potential areas include joint development of a highway works noticing procedure – a requirement of the New Roads and Street Works Act, the promotion of an apprenticeship scheme, and improvements to the ordering / payment process that would involve switching to a valuation method of payment rather than the current invoicing system. Nothing in these potential changes would require a fundamental review of the current contract terms and conditions and could be implemented through agreement.

The period of contract extension has also been considered. The original rationale for a five-year contract with a five-year extension is still valid, however, there are significant advantages in restricting the extension to an initial term of three years (to March 2013) with an option to extend for a further period of up to two years:

- Builds a degree of flexibility into the completion date of the Contract. This would enable discussions with neighbouring

authorities on a collaborative approach to delivery of highway maintenance services in the future beyond 2013;

- Enables a review to be carried out in 2012 of whether the HMTc continues to offer 'Best Value'. The five-year forecast of construction price indices anticipates an initial period of deflation with prices slowly increasing again from 2012.
- Allows for revisions to the highway network consequent on progress of construction of the Mersey Gateway project from 2012.

#### **4.0 POLICY IMPLICATIONS**

The current contract was awarded for an initial period of five years with a view to extension for a further period. There are no policy implications in relation to the recommended extension.

#### **5.0 OTHER IMPLICATIONS**

##### **5.1 Resource Implications**

The mechanism for dealing with variations of price described in paragraph 3.1 would continue to apply to the three-year period of contract extension, with the schedule of rates adjusted in line with the BERR construction price indices. This provides both the Council and the Contractor with assurance that costs are controlled within the effects of inflation / deflation.

Extending the current contract would save the manpower and financial resources which would otherwise be required to prepare and procure an alternative form of contract for the delivery of highway maintenance services.

##### **5.2 Sustainability**

It is vital that the provision of highway services, in particular emergency cover and repairs are continuous. Extending the current contract provides the greatest certainty of ensuring continuity of service.

##### **5.3 Best Value**

The contract was awarded to Amey Infrastructure Services Ltd. in 2005 on the basis of them offering the most economically advantageous tender. Amey submitted the lowest tender value and achieved the highest overall score for their quality submission. No significant contractual claims or variations to the contract have occurred during the four years of operation and the variation of price adjustment have resulted in the contract costs keeping pace with construction inflation. Amey have confirmed a reduction to Contractors Fee percentage applied to rates for non-scheduled items to 25%, which has the effect of enabling more work to be carried out. When compared with similar contract rates

and prices, the schedule of rates offers good value for money. It is considered therefore that the contract would continue to offer best value for the delivery of highway maintenance services.

#### **5.4 Legal Implications**

A legal 'Form of Agreement' for the proposed extension of the current five-year term contract with Amey LG would be required.

### **6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

#### **6.1 Children and Young People in Halton**

There are no direct implications arising from the recommendation.

#### **6.2 Employment, Learning and Skills in Halton**

As stated in paragraph 3.2 Amey LG operate from a depot in Widnes. They employ a significant proportion of local labour, and have a supply chain of goods and services much of which is sourced locally. The potential for an apprenticeship scheme is being explored with Amey LG, which could generate training and employment for local young people.

#### **6.3 A Healthy Halton**

There are no direct implications arising from the recommendation

#### **6.4 A Safer Halton**

As stated in paragraph 3.2, generally Amey LG have an excellent safety record with few blemishes. The issues that have arisen have been actively pursued to eliminate potential for further incidents.

The proposed contract extension offers the most secure option for continuity of highway services, including emergency response to incidents and reactive repairs.

#### **6.5 Halton's Urban Renewal**

The standard of highway works undertaken by Amey LG is good and this contributes positively to the overall condition and appearance of the highway infrastructure and public realm throughout Halton.

### **7.0 RISK ANALYSIS**

#### **7.1 Escalating Contract costs.**

As stated in paragraph 3.1 the mechanism for adjusting rates and prices is regulated using the BERR construction price indices and the schedule of rates is updated annually to take account of inflation or deflation. Highway maintenance works are ordered under the contract throughout the year and the volume and value of work ordered is constantly monitored against available budget allocations to achieve a balanced budget at year-end.

The contract is based upon one of the modern forms of New Engineering

Contracts (NEC) with a 'partnering' approach to delivering highway maintenance services. Amey LG have provided the service for four years under the current contract and during that time there have been no significant or serious contractual claims or other issues which have required resolution through the contract dispute mechanisms.

Extending the current contract therefore presents a low risk of contract costs increasing beyond budgets.

### **7.2 Reducing Quality**

Amey have consistently delivered work to a good standard with few occasions where work has been challenged on a qualitative basis and there is no reason to believe that this would change. The notification process and completion of works on time and the management of contract payments are both areas where improvements can be delivered within the current contract as described in paragraph 3.4 and therefore there is significant potential for improvements in quality in these areas.

### **7.3 Contractor Stability**

In the current business climate, the stability of the company providing Halton's essential and emergency highway services is of high importance. At least one neighbouring authority's term contractor has gone into liquidation and we know ourselves from recent experience, the difficulties caused when prospective suppliers and contractors cease trading.

A financial reference and assessment has been provided by Internal Audit as part of the process of contract review. This has detailed no issues of concern in relation to Amey LG and indicates that the company is of sufficient financial standing to continue to undertake the contract. It should however be noted that the assessment is based on historic financial data and may therefore not fully reflect the current financial standing of this company. Therefore measures to minimise potential risk to the Council have been advised that would be acted upon before entering into a contract extension.

Amey LG are a well established company with a demonstrable sound financial record. There would therefore appear to be significant advantages in extending the current contract with Amey for the financial stability this would deliver.

## **8.0 EQUALITY AND DIVERSITY ISSUES**

Amey have in place a fully documented Equality and Diversity policy that was examined during the initial tender evaluation stage of the current contract. This has been reviewed by the company at intervals throughout the initial four-year period of the contract and it fully meets all current standards and legislation.

## 9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
Highway Maintenance Term Contract April 2005 to March 2010	Highways Transportation and Logistics Department Highways Division	Colin Dutton Section Leader Highway Management
HMTC Tender Information Pack	Rutland House Halton Lea Runcorn	
HMTC Progress Meeting Minutes File		
BERR Building Cost Information Service Price Indices reports		
Amey LG Equality and Diversity Policy		
Amey LG Health and Safety Policy		
Amey LG Business Continuity Plan		
Letter Amey LG dated 30 January Halton Term Maintenance Contract		