

Notice of KEY Executive Decision

Subject Heading:	Approval to extend the Reactive & Planned Highway Maintenance and Construction of Improvement Schemes contract.
Cabinet Member:	Councillor Osman Dervish, Cabinet Member for Environment
SLT Lead:	Barry Francis, Director of Neighbourhoods
Report Author and contact details:	Nicolina Cooper Interim Head of Highways, Traffic & Parking Nicolina.cooper@havering.gov.uk
Policy context:	Connections: Improving roads and pavements
Financial summary:	The extension will be funded from both revenue and capital. The revenue budget code is A27002 - 651780 It is estimated that the 2-year contract extension value will be £25m

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Reason decision is Key	(i) Expenditure in excess of £500,000; and (ii) Likely to have a significant effect on two or more wards
Date notice given of intended decision:	19 March 2021
Relevant OSC:	Environment
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input checked="" type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

Maintaining and improving the borough's roads and footways is a key administration priority directly linked to providing a clean safe borough. The Corporate Plan includes specific commitments to maintain our roads, pavements and town centres. The Council has a duty to maintain the highway in accordance with section 41 of the Highways Act 1980.

The Director of Neighbourhoods is asked to approve:

- The extension of the Reactive & Planned Highway Maintenance and Construction of Improvement Schemes Contract for a period of 2 years starting from 1 April 2022.

AUTHORITY UNDER WHICH DECISION IS MADE

Havering Council's Constitution:

Part 3 [Responsibility of Functions]
2.1 General Functions of Cabinet

(p) To award all contracts above a total contract value of £10,000,000.

Part 3: Article 2 – Executive Functions

The Leader of the Council may by way of written notice to the Proper Officer delegate of executive functions to staff.

Part 2: [Articles of the Constitution] Article 1.03(d) – Definitions

The Director of Neighbourhoods is a Senior Leadership Team Director, for the purposes of the Constitution.

Part 4: Contract Procedure Rules (CPR) 19.4:

An extension to a contract may be made by a chief officer under the Scheme of Delegation provided that it was contemplated at the time the contract was awarded. For an award following an OJEU-compliant procurement, an extension may be approved if:

- *the published notice permitted the contract to continue past the defined period,*
- *the extension period does not exceed 50% of the awarded contract value, it will not mean that EU Threshold limits are exceeded by more than 50%; and*
- *performance by the contractor has been satisfactory.*

At the Cabinet meeting on 18 January 2017, Cabinet delegated to the Director of Neighbourhoods authority to exercise the option to extend the Reactive & Planned Highway Maintenance and Construction of Improvement Schemes Contract for a further two years as permitted under contract beyond March 2022.

STATEMENT OF THE REASONS FOR THE DECISION

Marlborough Surfacing Limited (MSL) were awarded the contract for a 5-year term from 1 April 2017. The full details of the award are set out in the Cabinet report of 18th January 2017 (Appendix 1). The contract is due to expire on 31 March 2022. There is an option to extend for

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a maximum period of two years, at the Council's discretion. The Contract requires the Council to notify the Contractor of any extension at least 12 months in advance of the end of the initial term.

The contract performance has been monitored through KPI's and contract meetings, and the Contractor has met the expected standards as set out in the contract. During the last 12 months there have been no issues raised with regard to service delivery or performance. The contractor has delivered schemes within set timescales and budget provision.

Since the start of the Highways Improvement Plan, the contractor has delivered 19 miles of highway and 14 miles of footway.

The Contractor continues to successfully deliver an ongoing programme of regeneration schemes. Some examples of more recent schemes are:

- Romford Town Centre
- Gidea park
- Hornchurch Town Centre
- Harold Wood

Over the past year, during the difficult Covid 19 period, the Contractor has proactively worked with the Council deploying resources to carry out reactive maintenance works when the Council could not resource it. In addition to this, the Contractor assisted with social distancing markings, which helped residents use parks and town centres in a safe manner and manufactured additional social distancing signage for retail areas, test and trace and vaccination centres. The Contractor also prepared traffic management plans for the safe re-opening of the Gerpins Lane Waste and Recycling Centre during this period to ensure essential services could access the site safely.

Early discussions with the Contractor took place to ensure that all issues affecting the UK's exit from the European Union were mitigated ensuring ongoing delivery of the contract. The Council are confident that any constraints will have little or no impact upon the Contractor continuing to deliver this contract efficiently and do not expect any disruption to service delivery.

During the extension period, discussions will take place to negotiate savings and identify opportunities for innovation and improvement, defining a Transformation and Improvement Plan, driving efficiencies throughout the service for the term of the extension. Ongoing discussions continue to take place regarding the use of alternative materials to achieve improved value.

In accordance with the contract and to support local communities the Contractor has delivered the following social value aspects during the contract to date:

- Engaged 3 new apprentices
- Employed 5 individuals in office roles who were previously unemployed
- Supported employees of non-violent crimes to get back to work
- Arranged a specialist speaker to engage with the whole workforce promoting positive attitudes on mental health
- Procured materials in line with London's Responsible Procurement Code
- Have a policy of reduce, reuse & recycle to reduce waste and deliver sustainable options
- Since 2015 achieved a CO2 reduction of 37% across fleet

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The Contractor has considered the ongoing social value aspects of the contract and have confirmed that the following provision will continue to be included as part of the contract extension:

- Engage with HaveringWorks and other local employers to assist disadvantaged groups into employment
- Advertise opportunities through local organisations e.g. HaveringWorks
- Support individuals leaving the criminal justice system through our links with The Shaw Trust
- Provide a 2 week work academy to 4 unemployed local residents
- Engage a minimum of 1 full time apprentice annually
- Engage with 1 school annually to provide learning opportunities
- Provide at least 10 volunteering days annually, identifying Havering based initiatives
- Support local sponsorship opportunities e.g. Havering Summer Festival Community Stage

Council officers have established and maintained a positive working relationship with the Contractor and the contract is considered to be working successfully.

During the term of the contract, a schedule of rates has been applied which will continue to be applied during the extension. In accordance with the contract, a CPI increase will be applied.

The actual expenditure is dependent on works incurred during the extension period. The value of the extension has been calculated using an estimate for reactive works of £5m and the investment of £10m per annum in respect of the Highways Investment Programme as part of the Havering Plan.

Costs in respect of reactive maintenance will fall into revenue spend and Highways Improvement Programme works and projects into capital spend.

Extending the highways contract for two years will provide the Council time to carry out a full evaluation of all procurement options, and to consider the changes in the market as a result of the Covid pandemic and potential changes resulting from the exit from the European Union.

A neighbouring borough has approached Havering to explore the option to carry out a joint procurement exercise. An extension would provide the Council with an opportunity to explore this option potentially providing long-term savings and benefits.

A two year extension will provide sufficient time to carry out market testing and review and develop the service specification including relevant KPIs and monitoring mechanisms.

OTHER OPTIONS CONSIDERED AND REJECTED

Retender the Highways Reactive & Planned Maintenance Contract

Whilst there are the timescales to retender the contract it would prove challenging in the current climate for the following reasons:

- Brexit – Whilst an agreement was reached, it is early days and the UK may yet feel further impact from leaving the European Union. It is unclear at present of the total impact on this service or on future relationships. This presents the Council with a requirement to mitigate risk in respect of providing this service. Given the work that

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has taken place with the current Contractor, we are confident that the risk to this service has been mitigated.

- Covid 19 – Councils along with suppliers are managing their way through this changeable situation. Due to the changes that are, still taking place, resources are susceptible to the virus causing possible loss of resource and redeployment of some resource to address Covid 19 issues arising.

In Source

This is not an option due to timescales, resourcing and additional costs including fleet and material costs. The current depot does not have the space for the requirements of a service at this level. There would be insufficient time to mobilise this option.

Do nothing

This would mean the current contract would expire on 31 March 2022 with no contractor to carry out the works after this date. This is not an option as the Council has a statutory duty to maintain the public highway.

PRE-DECISION CONSULTATION

MSL, Highways Team, Cllr Dervish, Lead Member for Environment

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Nicolina Cooper

Designation: Interim Head of Highways, Traffic & Parking

Signature:



Date: 24 March 2021

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. Section 41 of the Highways Act 1980 places a duty on the highway authority to maintain the highway at public expense. S1(3) of the Highways Act defines a highway authority as 'The council of a London borough ...are the highway authority for all highways in the borough'.
2. This report seeks approval to extend the contract with Marlborough Surfacing Limited for a period of two years commencing on 1 April 2022. The extension is subject to the Public Contract Regulations 2015 (PCR). Section 72 (1) (a) of the PCR permits variations of a contract where the contract sets out the scope and nature of the variation. The two year extension is permitted by the terms of the contract.
3. The extension must comply with the Council's Contract Procedure Rules (CPR). Under CPR 19.4 an extension is permitted where certain conditions are fulfilled which are the extension was contemplated at the time the contract was awarded, the award followed an OJEU-compliant procurement and the published contract notice permitted the contract to continue past the defined period. CPR 19.4 also requires the extension does not exceed 50% of the awarded contract value. The body of the report confirms that the proposed extension falls within CPR 19.4.
4. Under CPR 19.5 the extension document will be completed in the same manner as the original contract. Given the value of the extension, the extension will be signed as a deed.
5. The Council's legal services team will assist with drafting the extension. Any notice to extend the contract from the Council must be at least 12 months before the expiry of the current contract and accepted by the Contractor in writing

FINANCIAL IMPLICATIONS AND RISKS

The cost of the extension is estimated to be c£25m and will be funded from both revenue and capital. The revenue spend will be funded from A27002.651780 estimated to be c£0.5m per annum the capital spend in respect of the Highway Improvement Programme from C30000 £10m per annum for two years. Additional carriageway works will be funded from C28210 £1m and footway works from C28560 £1m both per annum for two years.

	2021/22	2022/23	Total
	£m	£m	£m
<u>Capital</u>			
C30000	10.000	10.000	20.000
C28210	1.000	1.000	2.000
C28560	1.000	1.000	2.000
<u>Revenue</u>			
A27002.651780	0.500	0.500	1.000
Grand Total £m			25.000

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Reactive maintenance and repair will be met from and kept within the existing revenue budget (A27002,651780). All new projects and Highways Improvement Programme works, in accordance with the Havering Plan will be funded from capital funding to be advised on individual project documentation as part of pre works quotes.

The budgets will be monitored regularly, spend will be contained within the stated budget envelope.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The recommendations in this report do not give rise to any identifiable HR risks or implications that would affect the Council or its workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

There are no health and wellbeing implications or risks arising from this extension.

BACKGROUND PAPERS

None

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name: Barry Francis

CMT Member title: Director of Neighbourhoods

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Committee Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____