

Requisitioning of Newly published decision: Approval to Extend the Reactive & Planned Maintenance and Construction Improvement Schemes Contract

Councillor John Tyler, Councillor Ray Morgon, Councillor Linda Hawthorn, Councillor Graham Williamson, Councillor Gillian Ford and Councillor Linda Van den Hende, are requisitioning the KEY Executive Decision by the Director of Neighbourhoods, made on 22 April 2021, for the 'Approval to extend the Reactive & Planned Highway Maintenance and Construction of Improvement Schemes contract' with Marlborough Surfacing Limited (MSL), on the following grounds:

- 1) In the Executive Decision's (ED) 'Statement of the reasons for the decision' it states that *'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 the a service delivery or performance*'

This statement is clearly incorrect. In Upminster and Cranham wards alone, there have been a number of performance failings since the contract started, including -

- a) Pike Lane, Upminster - Roadway broke up in numerous places soon after resurfacing, leading to significant remedial works.

Response: The work undertaken at Pike Lane consisted of an in-situ recycled road base as an innovative alternative to a traditional full depth concrete reconstruction. This involved the recycling of the existing surface for use as a new road base instead of the introduction of new virgin aggregate material. This process significantly reduced both the Authority's expenditure and the environmental impact of disposing of the existing surface and replacing it with traditional materials.

Core testing was carried out both prior to the work taking place and after completion. Following the completion of the work it was identified via a series of core testing that the subbase below the recycled layer was subject to movement. This movement, below the design of the works undertaken by Marlborough, resulted in reflective cracking to the new surface course that was laid as part of the scheme.

The road was therefore monitored for a period of six months until such time that the subbase had fully settled and repairs were then carried out to ensure integrity of the finished surface.

No costs were borne by Havering in respect of any remedial actions arising from the subbase movement below the new construction. All works carried out were done so in accordance with the specification set out by the Council.

- b) St. Mary's Lane, Upminster (within last 12 months) - Following resurfacing and installation of replacement speed humps, it was found that the speed humps were of the wrong shape, causing vibration and noise to local residents. Remedial work was subsequently undertaken to re-shape these.

Response: Traffic calming speed cushions were constructed in St Mary's Lane as part of a resurfacing and improvement scheme. The newly constructed cushions replaced those that existed prior to resurfacing and these were constructed matching the 1.7m x 3.0m dimensions of those that were replaced in accordance with the contract specification and the Design Manual for Roads and Bridges.

Marlborough were made aware that a number of complaints were received, complaining that the traffic calming measures were causing vibration to vehicles. The site was inspected jointly with Marlborough and Council staff and the design subsequently amended. An instruction to reduce the size of the cushions to 1.6m x 3.0m was made by the Council as a means to mitigate the vibration issues.

These works were carried out under the Highway Investment Programme, and were design changes and not remedial work. This was not an issue regarding the quality of work delivered by Marlborough.

- c) Winchester Avenue/Litchfield Terrace, Upminster (within last 12 months) - Following highway repairs and resurfacing, the replacement yellow lines were of such poor quality in places that they broke up within days and had to be replaced.

Response: Resurfacing was undertaken in Lichfield Terrace which included the reinstatement of thermoplastic road markings. The yellow parking restriction lines extending from newly resurfaced Lichfield Terrace into the junction with Winchester Avenue also required reinstating to ensure regulatory compliance given their poor condition.

The lines to Winchester Avenue were renewed during the resurfacing procedure on 5th February 2021 however given the poor condition of the existing surface these markings deteriorated. The old surface was therefore swept and lines were re-installed again on 3rd March. Road marking to the new surface in Litchfield Terrace have remained in good condition, the deterioration on Winchester Avenue being attributed to an old and worn asphalt surface. Although resurfacing to Winchester Avenue was not part of the programme Marlborough sought to reinstate these lines as they were in such poor condition.

Marlborough received feedback from a resident in respect of this programme stating *"We would just like to say thank you to all your team who have recently re-surfaced our road, Lichfield Terrace, the team all worked hard and were very tidy when finished"*

Could we have clarification as to why it is believed this statement is correct, contrary to the evidence?

Response: This is an NEC 3 Term Service Contract and in accordance with the terms the defect date for each discrete task in 52 weeks after task completion, which means that the supplier must address any defect within this period before it can be contractually considered a service failure.

Marlborough have addressed all issues arising within the defect period specified.

- 2) What are the Key Performance Indicators (KPI's) for this contract and why has past performance not been shown as evidence in the ED?

Response: The Key Performance Indicators are separated into the following categories:

- Operational
- Commercial
- Health & safety
- Environmental

The Operational indicators are as follows:

KPI	Type	Description	Measure	
KPI OPS 001	Timely Delivery	Footway Scheme works completed to programme	% calculated by dividing total number of Footway Scheme Works Orders where start date, any key dates and completion dates are achieved in accordance with programme by the total number of Scheme Works Orders	Demonstrate accordance with programme in excess of 90%
KPI OPS 001	Timely Delivery	Carriageway Surfacing works completed to programme	% calculated by dividing total number of Carriageway Surfacing Works Orders where start date, any key dates and completion dates are achieved in accordance with programme by the total number of Surfacing Works Orders	Demonstrate accordance with programme in excess of 90%
KPI OPS 001	Timely Delivery	Engineering works completed to programme	% calculated by dividing total number of Engineering Works Orders where start date, any key dates and completion dates are achieved in accordance with programme by the total number of Engineering Works Orders	Demonstrate accordance with programme in excess of 90%
KPI OPS 002	Timely Delivery	TMA and permitting requirements	% calculated by dividing total number of Works Orders completed fully in accordance with permitting and TMA requirements by the total number of Works Orders	Demonstrate accordance with requirements of 90%
KPI OPS 003	Quality Delivery	Right first time Carriageway Surfacing works	% calculated by dividing total number of Carriageway Surfacing based Works Orders requiring no snagging or repeat visits by the total number of Carriageway Surfacing based Works Orders	Demonstrate 80% compliance
KPI OPS 003	Quality Delivery	Right first time Footway Schemes	% calculated by dividing total number of Scheme based Works Orders requiring no snagging or repeat visits by the total number of Scheme based Works Orders	Demonstrate 95% compliance
KPI OPS 003	Quality Delivery	Right first time Engineering works	% calculated by dividing total number of Engineering based Works Orders requiring no snagging or repeat visits by the total number of Engineering based Works Orders	Demonstrate 95% compliance
KPI SVL 002	Quality Delivery	The satisfaction of the residents and businesses of the London Borough of Havering, with the way in which Works are carried out.	Percentage (%) of customer satisfaction survey returns indicating overall satisfaction. (The Council will deliver surveys, to those affected by works so as to gauge their levels of satisfaction with the standard of the works and the way in which they were carried out. The survey is structured to enable the Engineer to easily identify overall satisfaction of those surveyed.)	

The Commercial indicators are as follows:

KPI	Type	Description	Measure
KPI COM 001	Economic Delivery	Application Accuracy	Contract % calculated by dividing total number of works orders where the final value exceeds the agreed final application on final measure by more than 10% by the total number of works orders
KPI COM 002	Economic Delivery	Final Applications Submitted on time	% calculated by dividing total number of final applications on final measure submitted within 30 days of completion of a scheme by the total number of schemes.
KPI COM 003	Economic Delivery	Final Accounts Agreed	% calculated by dividing total number of works orders where the work is complete and the where the final account has been agreed.

The Health & Safety indicators are as follows;

KPI	Type	Description	Measure	
KPI HST 001	Health & Safety	Reduce Injuries	This Performance Indicator will measure both the Accident Incidents This Performance Indicator will measure both the Accident Incidence Rate (AIR) and the Accident Frequency Rate (AFR) for injuries to Contractors (and Road Users) that take place at sites at which the Contractor is providing the service.	Demonstrate continuous improvement against baseline agreed during mobilisation period
KPI HST 002	Health & Safety	Record of Near misses or incidents recorded.	Contractor & Client are encouraged to demonstrate willingness to record incidents and demonstrate subsequent action	Positive number of Near misses and actions
KPI HST 005	Health & Safety	Record of Site Inspections	Number of site inspections completed against number of live sites in the period	1:4 Sites inspected (25%)

The Environmental indicator is as follows;

KPI	Type	Description	Measure
KPI ENV 001	Environmental	To monitor the reduction in the contractors' vehicle and plant emissions.	The contractor in the first year is to provide total emissions from all vehicles and plant as a base figure. Yearly reductions are required from this base figure.
KPI ENV 002	Environmental	Construction waste reused or recycled	% calculated by dividing total volume of construction waste reused or recycled by the total volume of construction waste

Whilst, reference was made to the Key Performance Indicators in the Executive Decision they were not set out separately due to the size of the files.

As part of the extension further measures are being discussed to ensure the focus will be on continually improving performance and continuing to deliver best value to the Council.

- 3) What are the standards expected within the contract and what data/evidence is collected to demonstrate that standards have been met? As detailed above, members are aware of various defects outstanding as far back as 2020.

Response: The standards for key performance Indicators are set out below:

KPI	Standard Required
OPS 001 & OPS 002	90%
OPS 003 (Carriageway)	80%
OPS 003 (Footway & Engineering)	95%
SVL 002	Not set
COM 001	Not set
COM 002	Not set
COM 003	Not set
HST 001	Not set
HST 002	Not set
HST 003	Greater or equal to 25% of all live sites
ENV 002	Not set

Staff carry out monitoring on live sites and sign off on practical completion. The snagging works are then carried out which are checked by the Council. Once these are satisfactorily completed the site is signed off as a completed site and handed over to the Council. An example of this is attached.

As stated in the response to question 1 all defects must be completed within 52 weeks.

The contract has been monitored based on what is currently in place however, discussions are taking place to consider more robust targets to enable the contract to perform even more efficiently delivering best value to the Council. This will take into consideration the ongoing Highways Investment Programme and delivery of these works.

- 4) Absence of information and/or failing in the recording of incidents of remedial work that have actually been required. What are the true number of incidents where remedial work has been required across Havering since the contract started?

Response: The work that Marlborough carry out is quality assessed and where an issue is identified the Council will instruct Marlborough to carry out remedial works at no cost to the council and within the defect liability period.

In the last 12 months there has been one occasions where the Council have instructed Marlborough to address these issues.

- 5) What contract monitoring measures are in place?

Response: Weekly, monthly and quarterly meeting are in place.

Monthly Contract and Quarterly Strategic meetings for the next 12 months are detailed below:

DATE	TYPE OF MEETING
29 April 2021	Monthly contract
27 May 2021	Monthly contract
24 June 2021	Quarterly contract
22 July 2021	Monthly contract

26 August 2021	Monthly contract
23 September 2021	Quarterly contract
28 October 2021	Monthly contract
25 November 2021	Monthly contract
23 December 2021	Quarterly contract
27 January 2022	Monthly contract
24 February 2022	Monthly contract
24 March 2022	Quarterly contract

The monthly service report provided by Marlborough will be discussed in the meeting. Items for discussion at each meeting include:

- Actions from previous meeting
- Review of key Performance Indicators
- Health & safety
- Current Actions and issues
- Continuous Improvement and Innovation
- Financial Matters
- Communications

This structure of meetings provides an escalation process for issues in the event it is required.

6) There are no details on the timescales set for delivery of schemes. Are these being met?

Response: Every scheme is specified separately in accordance with the design of that particular scheme. A number of factors and interdependencies will determine the delivery schedule for each scheme. These are monitored by the officer responsible for that scheme and form part of the Highways Traffic and Parking Programme.

The Highways, Traffic and Parking Programme is updated weekly and rated by a RAG status to determine the situation of each individual site. Weekly management meetings take place in to monitor the progress of all work and schemes and to address any issues that may risk service delivery.

The Council and Marlborough jointly determine the timescales required for each individual project factoring in resource requirements, materials, and prioritisation etc. Each project is delivered against the agreed parameters. This methodology ensures that projects are delivered to timescale.

The programme has been coordinated based on areas, therefore, once the coordination is complete and all surveys carried out for drainage, iron works etc., we will then identify which areas we are doing and when. The programme is live and will change based on different factors such as utility works / scheme works etc. so we will be constantly reviewing which roads go when, but the 3 years list remains and all roads on it will be completed within the 3 years.

During the last 12 months Covid 19 has impacted on the priorities to programmed work. The Executive Decisions dated 23/04/20, 20/05/20 and, 22/10/20 provide details of the changes made as a result of this. The links to these decisions are:

[Decision - HTP Covid Programme Review | The London Borough Of Havering](#)

- 7) The contract includes carriageway repair (patching). A recent set of dangerous pothole repairs in Hall Lane, Cranham, declared as urgent by officers, took three weeks from the urgent notice being sent, to completion of work. Is this acceptable as part of the contract criteria and, if so, why? If not, would this be recorded as an 'issue' under the 'service delivery'?

Response: The pothole repairs in Hall Lane were sent to DSO initially, a combination of reduced resource and increasing defect reports at that time of year created a backlog, the majority of the pothole reports in Hall Lane were repaired by the DSO.

However, in order to address the backlog Marlborough were asked to pick up the outstanding jobs in Hall Lane, they attended and carried out a permanent repair within 48 hours of receiving the job.

A number of jobs have been received for Hall Lane the most recent, 3 urgent jobs on 31 March 2021 which had a 7 day target. These were completed on 22 April by the DSO outside of the target timescales.

- 8) What is the ratio of reactive repairs work carried out (split between the contractor and the council's directly employed operations service (DSO)) and why have so many DSO staff left Havering Council?

Response: Marlborough are currently carrying out around 75% of the reactive repairs, this has increased from around 25% prior to the Covid emergency.

DSO staff have left for many reasons, including the restructure, better offers of employment and general employment churn.

- 9) There are no details on how the contractor was able to carry out reactive repairs work, when the Council was unable to do so last year.

Response: Marlborough have a number of contracts in this region which enables them to respond to clients' needs with a dynamic workforce working flexibly to deliver a high standard of service.

- 10) There are no details or evidence provided about the work the contractor has undertaken within the Regeneration Schemes.

Response: Any regeneration schemes sit outside of this contract.

- 11) Is the criteria of 70% price, 30% quality, used as part of the evaluation in the procurement process, still applicable? Due to the number of problems identified, is the contractor actually providing the service that is required under the contract?

Response: This is not a re procurement but an extension of an existing contract. Marlborough are providing the service in accordance with the contractual requirements.

Any future procurement will consider the market conditions at the relevant time and ensure that the procurement applies the relevant evaluation criteria.

- 12) What are the Schedule of Rates for each category of road and pavements defects, together with any additional add-on charges that may be levied?

Response: The Schedule of Rates is commercially sensitive so cannot be published as part of a public report. However, the Schedule of Rates agreed in the original contract will continue to be applied during the extension period.

- 13) There are no benchmarking details on how competitive the Schedule of Rates are compared to other contractors.

Response: Benchmarking took place as part of the initial procurement in 2017. The evaluation model took a number of regular items for comparative purposes. The same items were compared across all suppliers and Marlborough were found to offer the best pricing.

However in 2019 (24 months into the contract) officers met with Marlborough to review the rates and as a result of this secured additional savings on both the 700 and 1100 series (carriageway resurfacing and footway renewals) achieving greater value.

In addition to this officers secured a contribution of £30k for joint marketing and communications. Furthermore, Marlborough fund an officer that deals with all permitting matters and utility searches and also provides support as required to ensure that works proceed as scheduled.

Additionally, another officer is provided by Marlborough to carry out all the surveys and associated works for vehicle crossovers. This area of work provides a revenue stream to the Council.

- 14) Should the contract with MSL not be extended past 31 March 2022 and a new tendering process take place for 'Reactive & Planned Highway Maintenance and Construction of Improvement Schemes', from that date forwards?

Response: This would not be the officer's recommendation. Based on the work that has been carried out we believe that this contract provides value for money.

- 15) Are the stated reasons for not undertaking a new tender process, i.e. Brexit and COVID-19, applicable for a contract that would not start until 2022?

Response: Brexit and Covid are relevant as there are uncertainties in the market about the supply of materials in respect of bidders that would rely on supplies from abroad.

In terms of Covid a number of impacts remain unknown including the possible spike of infection rates which may lead to further restrictions impacting on resources

- 16) Bearing in mind that *'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'*, and the contract is due to expire on 31 March 2022, why has the ED for an extension to the contract not been published well in advance of the cut-off date, which presumably expired on 31 March this year?

Response: Initial work with regard this matter commenced in 2020 however the service suffered resource issues and conflicting priorities over the year. The staff member leading on this project no longer works for the Council and did not progress the work as reported.

Once we recognised this we worked as effectively as possible to get this Executive Decision to Members.

17) With reference to point 16), has the contract extension already been signed and,if so, when?

Response: No extension has been signed