

## Notice of KEY Executive Decision

<b>Subject Heading:</b>	Interim arrangements for the delivery of Highway services
<b>Decision Maker:</b>	Cllr B Mugglestone Cabinet Member for Environment
<b>Cabinet Member:</b>	Cllr B Mugglestone, Cabinet Member for Environment
<b>SLT Lead:</b>	Neil Stubbings, Strategic Director of Place
<b>Report Author and contact details:</b>	Mark Hodgson, Head of Highways, Traffic & Parking <a href="mailto:Mark.hodgson@havering.gov.uk">Mark.hodgson@havering.gov.uk</a>
<b>Policy context:</b>	This report supports the Places objectives - A great place to live, work and enjoy
<b>Financial summary:</b>	The cost of the extension is estimated to be £9.370m over a year and will be funded from revenue and capital budgets.
<b>Reason decision is Key</b>	The grounds for decision being Key: (a) Expenditure or saving (including anticipated income) of £500,000 or more (c) Significant effect on two or more Wards
<b>Date notice given of intended decision:</b>	22/01/2024

**Key Executive Decision**

<b>Relevant Overview &amp; Scrutiny Committee:</b>	OSSC - Place
<b>Is it an urgent decision?</b>	N/A
<b>Is this decision exempt from being called-in?</b>	No

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

People - Things that matter for residents

Place - A great place to live, work and enjoy X

Resources - A well run Council that delivers for People and Place.

## 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.

For the reasons detailed in this report it is recommended that the Cabinet Member for Environment, is asked to approve:

- An extension of the contract with Marlborough Highways Ltd for the provision of Reactive & Planned Highway Maintenance and Construction of Improvement Schemes Contract for a period up to 12 months commencing 1 April 2024 at an estimated value of £ 9.370m.

### AUTHORITY UNDER WHICH DECISION IS MADE

**The Havering Constitution,  
Part 3 Paragraph 2** Executive Functions

2.5 The following Functions may be delegated to individual Cabinet members by the Leader.

(h) To award contracts, agree extensions of contract terms and awards/extensions of Consortia contracts, of a value above £5,000,000 and up to £10,000,000 and contracts where external funding is guaranteed and there is no longer term financial commitment to the Council. (Note: Pension Committee has powers to invite tenders and award contracts for investment matters within their terms of reference).

### STATEMENT OF THE REASONS FOR THE DECISION

#### Background

The Highways contract was originally awarded for a 5-year term from 1 April 2017. The full details of the award is set out in the Cabinet report of 18th January 2017. An extension of a contract may be made under the scheme of delegation provided it was contemplated at the time of the award. The contract was extended in accordance with

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the approved recommendation in the 2017 Cabinet report, for a period of 24 months and is due to expire on 31 March 2024. The details of the extension is set out in the decision of 22 April 2021.

Contract performance has been monitored through KPI's and contract meetings, throughout the term and the contractor has met the expected standards as set out in the contract. The contractor has delivered schemes within set timescales and budget provision.

Council officers have established and maintained positive working relationships with the supplier and the contract is being delivered successfully.

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

Procurement for the Highways contract is currently being undertaken as agreed in the July 2023 Cabinet Report. The opportunity has been published and is progressing in accordance with the prescribed timescales. The specification has been developed in accordance with market intelligence and has taken time to finalise to ensure it is capable of delivering the required services for the whole term of the contract. The contract award is not anticipated to take place before October 2024. Therefore, the Council requires a means to continue delivering the services during the interim period in accordance with their statutory duties.

### **Next Steps**

A proposed extension of up to 12 months with break clauses at every 3-month period will provide the necessary time to complete the procurement in accordance with the prescribed timescales.

### **Marlborough Highways Ltd**

The cost of the extension is dependent on the works undertaken during the extension period. However, the estimated value of works is £9.370m and will be funded from both revenue and capital. The revenue spend will be funded from various identified revenue budgets, estimated to be £2.870m. It is expected that any Highways Improvement Programme work will be funded from capital budgets to the value of up to £6.500m.

Marlborough Highways have indicated an acceptance of the terms in accordance with the below spend profile i.e. a proportionate amount of capital spend aggregated over a 3 monthly (if the contract is only extended for 3 months) or 6 monthly (if the contract extension is enacted for 6 months) period.

Early discussions have taken place with Marlborough Highways Ltd who have indicated that they would be open to extend the services beyond the end date of the current contract for a further period. The Contractor has also indicated that they would be amenable to adopting the same set of existing rates and Contract Clauses / Specification as part of the extension.

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### **OTHER OPTIONS CONSIDERED AND REJECTED**

#### **In Source**

This is not an option due to timescales, resourcing and additional costs including fleet and material costs. There is no depot and the current area that the DSO highways team are working from does not have the space for the requirements of a service at this level. There would be insufficient time to mobilise this option. Crucially the arrangements are being procured and the market is providing information on TUPE and other substantive arrangements. It would be impractical to change the arrangements at this juncture as otherwise there would be significant disruption to the tender arrangements with fresh documents to be made available to bidders thus delaying the procurement further. Therefore, this option was considered and rejected.

#### **Use current DSO resources**

There are insufficient resources to carry out all the highway works required. The current DSO Operatives should continue to carry out as much of the works as possible in the same manner they are currently do. This can then be supplemented using Marlborough staff as is the current practice. Therefore, this option was considered and rejected

#### **Do nothing**

The current contract expires 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.

#### **Retender the Highways Reactive & Planned Maintenance Contract for interim period**

The procurement for these services is underway but will not be awarded before the current contract expires. It would not be reasonable to re tender for the interim period as this would incur additional cost and take resources away from the ongoing procurement. Additionally, it is anticipated that there would be little uptake in the market for any Contractor given the short period of time and associated fees related to the works. Hence, this option was considered and rejected.

### **PRE-DECISION CONSULTATION**

N/A

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

Name: Mark Hodgson

Designation: Head of Highways, Traffic and Parking

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Signature:



Date: 06/02/2024

## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

Section 41 of the Highways Act 1980 places a duty on the highway authority to maintain the highway at public expense. Section 1(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 (...)'.

This report seeks approval to extend the contract with Marlborough Highways Limited for a period of one year commencing on 1<sup>st</sup> April 2024. The extension is subject to the Public Contract Regulations 2015 (PCR). The extension value is £9.370m. The original contract is above the Public Contracts Regulations 2015 (PCR 2015) threshold for works of £5,372,609. The extension is not captured under the original contract award, but the Council is permitted to make the extension as it is in compliance with Regulation 72(5) PCR 2015 as the extension falls below the 10% of the original contract value, also falling below works threshold and do not change the overall nature of the contract.

Additionally, 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.

Officers are satisfied that the proposed extension meets with the requirements of the CPR.

For the reasons set above, the Council may extend the existing contract for one year.

### **FINANCIAL IMPLICATIONS AND RISKS**

All costs are within the existing budgets. Any works that are carried out during this period will be funded from the current 2024/25 budgets:

- Highways – £9.370m

The table below shows the estimated spend per period

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- The figures provided are cumulative values aggregated from previous assumed spends per quarter.
- An assumption of a steady spend profile throughout the year has been made.
- An assumption in respect of the HIP across all quarters (£4.5m budget for next year) has been made. An estimated LIP spend of £1m and an estimated regeneration spend of £1m across the year (to occur in Q3 and Q4), therefore the capital figures for highway spend are weighted by a further £1m in both Q3 and Q4.

	<b>3 months</b>	<b>6 months</b>	<b>9 months</b>	<b>12 months</b>
<b>Highways</b>	£m	£m	£m	£m
Revenue Spend Forecast	£0.718	£1.435	£2.153	£2.870
Revenue Spend Budget	£0.718	£1.435	£2.153	£2.870
Capital Forecast	£1.125	£2.250	£4.375	£6.500
Capital Budget	£1.125	£2.250	£4.375	£6.500

The budgets will be monitored regularly, spend (inclusive of CPI uplifts) will be contained within the stated budget envelope.

It should be noted budgets stated in the table relate to the full year, as such they will need to fund the extension and new contract.

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

The DSO staff are included in the ongoing procurement process as part of the new contract. TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) will apply, and the employees would be required to transfer to the employment of a new service provider. Employees in scope of the TUPE transfer are being regularly updated throughout the procurement process and once the award is made to the successful bidder, the statutory TUPE Information and Consultation process will commence and be followed by a period of mobilisation for which a plan would be produced.

The following risks have been identified; however, these are being mitigated through regular communication with all parties e.g., Trade Unions, staff.

- Sufficient planning required for any TUPE and staff questions to be resolved;
- Sufficient information for staff with regular communications.

The Council are working closely with all parties to mitigate any risks

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### **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 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 socioeconomics and health determinants.

The group of staff in scope is very small and therefore individuals may be identifiable. EQIA data is therefore not included in this report.

### **HEALTH AND WELLBEING IMPLICATIONS AND RISKS**

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

### **ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

There will be no negative impact on the Authority by extending this contract. The incumbent supplier will continue to deliver against the existing contracts.

#### **Procurement**

As part of the ongoing procurement of the highways contract, tenderers will be asked to provide their environmental credentials which will form part of the evaluation along with other technical responses.

Contractors will be required to demonstrate what measures, they propose to take to minimise the production of waste arising from operations, and how the remaining amount of waste will be recycled and disposed of.

Furthermore, contractors will 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.



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### **BACKGROUND PAPERS**

Cabinet decision dated 18 January 2017

[\(Public Pack\)Agenda Document for Cabinet, 18/01/2017 19:30 \(havering.gov.uk\)](#)

Key Executive Decision to extend Highways contract dated 22 April 2021

<https://democracy.havering.gov.uk/documents/s50336/29.%20Key%20ED%20Marlborough%20Surfacing%20Limited.pdf>

### **APPENDICES**

**Key Executive Decision**

**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

**Details of decision maker**

Signed

*Barry Mugglestone*

Name: Barry Mugglestone

Cabinet Portfolio held: Environment

Date: 29/02/2024

**Lodging this notice**

The signed decision notice must be delivered to Committee Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_