



Appendix 1

Highway Services Re-Procurement Project

Interim Report of the Reference Group

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The interim report of the Highways Contract Re-procurement Reference Group

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Introduction

1. The maintenance of the County's highways is one of East Sussex County Council's (ESCC) most visible services which everyone uses on a daily basis. Highways maintenance is of key importance to residents and businesses throughout East Sussex, who rely on roads and footpaths to be able to get to where they want to go, and to move goods and services around the County efficiently and safely.

2. The Place Scrutiny Committee and the former Economy, Transport and Environment (ETE) Scrutiny Committee have a long history of involvement with the Highways Maintenance Contract. Prior to the letting of the current Highways and Infrastructure Services (HIS) Contract the ETE Scrutiny Committee was closely involved in the development of the contract service delivery model and the key changes that were made to improve the service. Both Committees have also undertaken a number of scrutiny reviews on particular aspects of the service and policies in this area.

3. The current HIS Contract comes to an end on 30 April 2023 and officers have established the Highway Services Re-procurement Project (HSRP) to carry out the work needed to specify and retender the contract. The objectives of the Project are to select the next service delivery model (SDM) for the contract and the type of commercial contract that is to be used to retender the contract.

4. The Place Scrutiny Committee agreed to form a Reference Group to work alongside officers on the development of the new contract in keeping with the previous involvement the Committee has had in this work. The scope of the Reference Group's work is to:

- Act as a critical friend and provide input into the key stages of the Highway Service Re-procurement Project;
- Comment on the services to be included in the contract and the size and role of the client function;
- Provide input into the development of strategic outcomes and key performance indicators for the new contract;
- Review and comment on the contract model, Outline Business Case (OBC) and Detailed Business Case (DBC) prior to their approval by Cabinet;
- Represent wider Members' views on the key elements, delivery and performance of the contract and to advise on the ways to disseminate information about the development of the new contract to Members.

5. As part of the work of the Reference Group members will:

- Examine the arrangements and performance of the current Highways and Infrastructure Services contract to identify any areas for change and/or improvement.
- Consider the services to be included in the contract and the potential Service Delivery Models, including comparison with other local authorities.
- Review soft market research of the providers and developments/trends in the market for the provision of highway maintenance services (e.g. preferred contract type, duration, number of providers etc.).
- Review and comment on strategic objectives and key performance indicators (KPI's) for the new contract.
- Review and comment on the Outline Business Case (OBC) and Detailed Business Case (DBC) prior to their approval by Cabinet.

6. The Highway Services Re-procurement Project is comprised of a number of stages leading up to the commencement of the new contract in May 2023. This is a long-term piece of work and the purpose of this interim report is to cover the Reference Group's involvement in the first stages of the Project, which is the development of the Outline Business Case (OBC) prior to the agreement of the OBC by Cabinet in January 2021.

Background

7. Cabinet awarded the current Highways and Infrastructure Services Contract 2016-23 to Costain CH2M in December 2015. The services are delivered through an unincorporated joint venture agreement between Costain Ltd and Jacobs (formerly CH2M). This represented a change from the previous service delivery model (SDM), from a multiple provider arrangement to an Integrated Single Provider model. Separate contracts for the Highway term maintenance, maintenance of street lighting, traffic signals and fleet and special structures maintenance were replaced with an Integrated Single Provider contract for all services. This also included functions previously undertaken by the County Council's in-house highways team such as design work, dealing with insurance claims, customer services contact centre and Highway Stewards.

8. The current contract was awarded for a fixed seven-year term and has no provision for contract extensions, by design. The contract is based on the industry standard New Engineering Contract 3rd Edition (NEC3) Engineering and Construction Contract, modified as appropriate with output focused specifications to deliver our current maintenance policy and levels of service as the minimum required.

9. The contract includes 24 specific performance indicators (SPI's) which measure contract performance. It has targets linked to the contract outcomes which incentivise the contractor to deliver works for more value in order to access a potential 'gain share' reward payment, generated from any saving on target costs if a required performance level is achieved. Targets are increased each year to drive improvement.

10. The value of the work covered by the current contract arrangements is around £35 million to £40 million per year. This is broken down into the following elements:

- Highways Service Term Maintenance - £9.7 million revenue funding which covers reactive, cyclical and planned maintenance activities.
- Highways Core Capital Programme - £25 million covering structural road repairs, bridge maintenance and replacement street lighting programmes.
- Non-East Sussex Highways budgets - £5.4 million for Integrated Transport Management and Traffic Management & Safety.

11. The Highway Services Re-procurement Project uses the Council's four stage corporate Strategic Commissioning Framework and HM Treasury's Five Case Model as the basis for developing the business cases, which is considered best practice. The HSRP project is structured into the following:

Stage 1 – Planning & preparing the Outline Business Case (OBC)

Stage 2 – Planning & preparing of the full Business Case (DBC)

Stage 3 – Delivery of Procurement Strategy

Stage 4 – Implementation through Mobilisation & Training to Contract Commencement

12. The work of the Reference Group covers stages 1 to 2 of the Project. The work carried out by the reference Group to date, which is included in this report, covers stage 1, specific activities include the determination of the future contract outcomes and inputting into the options appraisal which evaluated a long list of options down to a short list of options.

Reference Group Work to Date

Strategic Case and Service Outcomes.

Development of the Strategic Case

13. The development of the Strategic Case is an assessment of why the Project is needed and the factors that will affect the procurement. The Council has a statutory duty to maintain the Highway in a safe condition and the road network must be available for people to use. The current HIS contract was let on a fixed term basis and therefore it is not possible to extend it. Consequently, the Council needs to procure a new contract to meet its statutory obligations and the policies it has in place.

14. The Reference Group noted that there are a number of future challenges arising from the new contract. They are:

- A likely increase in core costs (revenue) of the new maintenance contract;
- ESCC budget pressures are likely to continue
- There have been changes in the contractor marketplace and there are supply chain changes.

15. One of the strategic considerations when the contract was last re-tendered was the need to have cost certainty on the price of the new contract and to achieve savings required as part of the Council's Medium Term Financial Plan. This influenced the type of contract pricing used and the service delivery model selected to reflect the Council's financial position at that time.

16. The Council's financial position remains constrained, with a great deal of uncertainty about future levels of funding. Seeking price certainty would help with budget planning and mean the use of fixed price (lump sums) payment options, for the majority of core activities under the contract.

<p>The Reference Group considers that having price certainty is important for the Council and should be included in the new contract arrangements.</p>

Draft Service Outcomes

17. The Reference Group considered the draft service outcomes for the new contract which define the areas of focus for the new contract along with the Council's Overarching Priority Outcomes. The latter have been updated since the last contract was procured, and some of the Council's delivery outcomes have been changed to reflect the declaration of the Climate Emergency by the Council and the impact of Covid19 on services.

18. The service outcomes for the current HIS were developed to in conjunction with previous scrutiny reference group to address service delivery issues and desired improvements in the contract. They are listed below:

- To have the best network condition for the investment available and:
- Improve asset condition.
- Promote economic growth.
- Reduce the level of third-party claims.
- Provide value for money.
- Promote local engagement.
- Improve customer satisfaction and communications.

19. Since the development of the last contract, the service has delivered a number of improvements and successes, notably:

- An improvement in road condition as measured by the annual surveys
- Better understanding of ESCC's Highways assets
- Huge improvements in drainage response
- Demonstrable value for money
- £1.4million saving in the revenue budget
- Reduction in ESCC fixed costs and third-party claims.
- An improvement in customer satisfaction levels

20. Consequently, a new set of 8 service outcomes has been developed to reflect the changed circumstances and the new areas of focus in line with the requirements for the new contract. They are:

- Support initiatives that deliver carbon neutral services, schemes and incentives.
- Optimise and improve road network performance for all users and to support the local growth agenda.
- Enhance the local economy through road network expansion and improvement.
- Sustain a financially resilient service that delivers best value with the resources available.
- Engage effectively to understand and meet the needs of our citizens and communities.
- Embrace best practice, innovations and new technologies.
- Develop and sustain collaborative partnerships that deliver the objectives of all partners.
- Attract, develop, empower and retain the best people.

21. The Reference Group discussed the new service outcomes and whether they should be prioritised. Experience from other Councils showed that different service outcomes are important to different groups of residents and services users. The 8 service outcomes are consistent with the ones being used by other councils and capture the main areas of focus for the contract.

The Reference Group endorses the service outcomes for the new contract and agreed that they should be given equal weight rather than prioritise some over others.

Type of Commercial Contract

22. The Reference Group examined the type of contract that should be used. Industry best practice suggests that using the New Engineering Contract 3rd Edition (NEC3) Engineering and Construction Contract would be the best option, or a later revision (NEC4) if available at the time of procurement. NEC contracts are designed to get the best outcomes through shared objectives and a collaborative approach to service delivery. Using an NEC contract would be consistent with the current contract type which has successfully delivered services. All NEC contracts are designed around the following three principles:

- They stimulate good management of the relationships between those signing the contract and the work involved in the contract.
- They can be used in a diverse range of commercial situations, for a wide variety of work and in any location around the world.
- They are clear, simple and written in plain English, using a language and structure which is straightforward and easily understood.

The Reference Group supports the use of an NEC Contract for the procurement of the new Highways Maintenance Contract.

Outline Business Case

23. The development of the Outline Business case or OBC is where a range of future service delivery models (SDM) are appraised. The objective of the OBC is not to recommend a preferred SDM but to recommend a shortlist of potential feasible options that could best meet the Council's needs, the shortlisted options are then further developed in more detail at stage 2- the Detailed Business Case (DBC). The evaluation used three main groups of factors:

- Strategic Performance – delivering the service the Council needs
- Attractiveness; and
- Achievability in terms of having the capacity and resources to implement

24. The Reference Group were involved in a two-stage process whereby a short list of 5-6 SDM options was created through a strategic options analysis and appraisal process. This short list was then further reviewed to agree 2-3 options to be carried forward into the Detailed Business Case (DBC) stage of the procurement process.

25. The strategic options analysis was supported by Proving Services which is company based at Cranfield University formed as research group working with ADEPT (Association of Directors of Environment, Economy, Planning and Transport). Most of the members of the research group are County or Unitary authorities looking at the different options for the delivery of highways services and the highways sector.

26. Value for money and quality assurance are key areas of interest for the Project and Proving Services has been running a bench marking club for highways services with ADEPT over the last 8 years. Some of the key strategic themes for all authorities that have come out of this work are given below and are consistent with the service outcomes developed for the contract:

- Better connections with the communities they serve, including how they engage with the public and Parish & Town Councils;
- Local economy and environmental development issues;
- Democratically accountable services;
- Resilient and collaborative services; and
- Sustainable carbon neutral services.

27. The Reference Group heard from Proving Services that the value for money (VFM) assessment of the performance of the current contract is good for ESCC, and there is a lot that the Council may want to preserve.

28. The Reference Group commented that whatever service delivery model is selected, it needs to be flexible enough to deal with changes to transport that may be brought about as part of the revision of the Local Transport Plan (LTP) and climate change. The new contract also needs to be able to deal with changes that may result from the Government White Paper on Devolution.

Service Delivery Models

29. The Highway Services Re-procurement Project (HSRP) has been assisted by Proving Services in the development and assessment of the various service delivery models. Comparisons have been made with other local authorities to ensure ESCC is confident in its approach. The Reference Group considers there is strength and robustness in the approach that has been taken, which gives an increased level of confidence in the assessment and selection process used for the service delivery models.

Provider Market review

30. Proving Services have carried out a review of the market on behalf of ESCC. It has become apparent from this work that there are 24 authorities who will be coming to the market to re-procure their highways services contracts roughly within three years of each other. This may create a sellers' market with the providers in the sector. It is also worth noting that some current providers may leave this market sector.

31. The market review work has included forming a study group of around 8 local authorities to look at the market in more detail and the range of service delivery models available. The interim results of this work are that providers will be selective in what contracts they bid for. They will look for authorities with a good reputation and who are fair and reasonable to deal with.

The Reference Group considers that it is important for the Council to adopt a service delivery model which is attractive to the provider market and that meets the Council's service requirements.

Strategic Service Delivery Model options review and appraisal

32. A long list of 15 service delivery models was drawn up and assessed and scored against Performance, Attractiveness and Achievability factors. This produced a ranked list of options, the top 6 of which were shortlisted. The shortlisted options are:

- Option 2 - Single Provider Integrated Contract (Design & Works)
- Option 9 - Teckal Arms Length Company
- Option 7 - Joint Venture (Public to Private)
- Option 12 - Mixed Economy, Best Option by Function / Service
- Option 1 - Single Provider, Contractor & Design (Separate)
- Option 15 - Mixed Economy, Primary Design + Add On

33. Across the 8 authorities in the study group the 6 service delivery options shortlisted by ESCC represent the top performing options in terms of preferences. There is a good correlation between the ESCC shortlisted options, and the options identified as the preferred options by other local authorities. Appendix 008 of the Cabinet report sets out the full study findings. ESCC's top 6 options are the top 6 in terms of:

- being close to current service delivery models; and
- the top options for providers.

The Reference Group assessed and reviewed the top 6 shortlisted service delivery model options and confirmed their support to take them forward to the next stage, but recommended that the short list be reduced to 5 by dropping the 'Primary Design + Add On' option as it is very similar to the other options within the shortlist.

Service Delivery Models to be included in the Outline Business Case

34. The next stage of the analysis process was to consider the shortlist of 5 options in more detail to select 2-3 service delivery model options to take forward and include in the draft OBC for consideration by Cabinet. The key benefits and weaknesses of each model were reviewed and discussed by the Reference Group. A summary of the discussion of each option is outlined below.

Option 1 - Separate Contracts for Works and Design. This is similar to the current service delivery models but separates out maintenance works and design work into 2 separate contracts. In terms of market acceptability, the market likes this model and it reflects how the market is currently operating. The service appetite for this is mixed as the Council has had problems with this type of model in the past in terms of cost and efficiency in the handover of work. It would require a change in the structure of the Client. It scored second overall. Design is an area of focus for improvement.

Option 2 - Integrated Single Provider. There is a lot of confidence in delivering this model as it is the current service delivery model. In terms of market acceptability, the market favours this model. The range of maintenance activities provides a critical mass of work throughout the year and has the scope and scale of services including design work that is particularly attractive to the market. In respect of service appetite for this model there are no barriers to the implementation of this model, and there is some scope for improvement.

Option 9 – Teckal. This is where a Local authority Trading Company (LATC) would be formed to provide the services. There are a lot of aspects of this model that the Council has no experience of, and the Council may need to buy in additional expertise to run this service model. There is little market appetite for this model and there is a question as whether it would be profitable and will be more costly to set up. This model presents a number of potential critical barriers to implementation. There are not many examples of where this model is operating successfully.

Option 7- Joint Venture (JV). This option is very complex and has similar issues to the Teckal option. There would be a complex transition compared to the current model. There is no appetite from the market to create a Joint Venture. No one wants to do it, which is one of the critical barriers to implementation. There are merits in the model, hence the scoring, but very few JV contracts are in use at present or have been awarded recently. In terms of service appetite there are a lot on unknowns and there could be more barriers.

Option 12 - Mixed Economy. Under this model the Council would select different single providers for different aspects of the contract. This is very similar to the previous contract arrangement where there was a main contractor for works, separate contracts for lighting, traffic signals and fleet and special structures maintenance with an in-house design team plus an external top up contract. This is not something that the market favours as it is too narrow in scope and does not offer opportunities to do other work. This option is not favoured from a service perspective as there is no integration so ESCC would lose the efficiency gains it has achieved with the current contract arrangement, thereby adding to costs. The market appetite for this model is mixed to negative, and the client team would need to be larger.

35. The Reference Group commented that under the Separate Contracts for Works and Design model and the Integrated Single Provider model, the provider will sub-contract out the more specialist work leading to reputational risk for the Council if the quality of the work is not up to standard. The quality of work needs to be managed by the main contractor to prevent reputational damage. This has been an issue at times with the current contract and will need to be interrogated further at the DBC stage when looking at quality control and the provision of Highways Stewards.

36. The Reference Group noted that option 7 Teckal would be a huge change for ESCC and it scores lower. It would not be appropriate to take this option further forward in a time of such challenge in local authority funding, when cost certainty is important. It was acknowledged that JV option 7 and Mixed Economy Option 12 also have potential critical barriers to implementation and therefore the Reference Group agreed that these three options should not be taken forward.

37. The recommendation is to take the first 2 options forward into the draft Outline Business Case (OBC) namely:

- Option 2 - Integrated Single Provider model; and
- Option 1 - Separate contracts for Works and Design model.

38. The reference Group heard that the other local authorities in the Study Group who had completed their scoring of the options had equal top scores for the first 2 options, with the Integrated Single Provider option ranked first. The Reference Group commented that the scoring comparison with other local authorities gave confidence that the recommended final two options were the right options to be taken forward. Full details of the study findings are set out in appendix 008 of the Cabinet report.

The Reference Group endorses the recommendation that the final two options that should be taken forward in the draft OBC are options 1 and 2 as they represent the most favourable and sensible options.

Service Delivery and Continuous Improvement

39. As part of its work the Reference Group considered the areas of the current contract where there may be issues or opportunities for improvement. This is based on the operation of the existing contract and the scrutiny review work that the Committee has undertaken in this service area.

40. The Project Team have also sought the views of the Client Team and other Teams within the Communities, Economy and Transport department on areas where there may be scope for improvement. Further survey work has also been carried out to seek the views of the highways contract staff on ways in which the service might be improved. This work has been resulted in around 16 suggestions where staff think there is a possibility of making improvements.

41. A summary of the areas for improvement which the Reference Group suggests are taken forward through consideration of the DBC and addressed in the next stage of the project is given in appendix 1, with quality assurance and the role of Highways Stewards being one of the main areas for further work.

Summary

42. The Reference Group has completed the first stage of its work on the selection of the service delivery models and the development of the draft Outline Business Case. It supports the selection of Integrated Single Provider and the Separate contracts for Works and Design service delivery models as the recommendation of the OBC to further develop these two options at the next DBC stage

43. The Reference Group has identified some areas of interest for improvement of the contract and will continue its involvement as the project moves into the next stage to develop the Detailed Business Case.

Appendix 1:

Summary of the Areas for Improvement

Quality Control / Quality Assurance - There have been issues with the quality of sub-contracted work (supply chain management) and there is a need for more robust/greater control of this area of work and it can lead to reputational damage for the Council. The work on the DBC will explore whether the current resources in the Client Team for this work is sufficient and whether bringing the Highway Stewards in-house would provide a better service.

Member Communications - ESCC Councillors should always be included in communication on issues within their division and training could be provided on the role of Councillors and the issues that are important to them to improve the two-way dialogue with Contact Centre staff.

Highway Stewards - Consistency of stewardship (identification of all defects) and their ability to enforce issues and standards. There may need to be a greater understanding of their role and making sure they can deliver against these expectations. Their relationship with County Councillors is key and an introduction when taking over the role would be beneficial as Councillors are often aware of long-term issues within their Division. For issues which reoccur a different approach may be needed to investigate and find solutions.

Customer Communications – Timeliness of communications (all stakeholders): a response to enquiries is always given but not always in a timely way. A review of response times in the contract may be needed. Channel shift and innovation: it would be good to be able to use an app on a smartphone to report problems/log service requests (e.g. the Report It App used by Lewes DC and Eastbourne BC). The resilience of communications with the Contact Centre may need reviewing at times of peak demand.

Stakeholder Engagement – The relationship and approach to relationships with District Borough, Parish and Town Councils should to be reviewed as part of the new contract arrangements.

Grass Cutting – The timing of the grass cutting service means that at present the grass is sometimes cut before wildflowers have time to set seed. Grass cutting arrangements under the new contract should be examined to see if more flexibility on the timing of cuts can be introduced to benefit biodiversity.

Performance Management and the Incentivisation Model - Do we have the right Strategic Performance Indicators for the contract? These will be reviewed as part of the next stage of the Project together with the incentives in the contract.

Third party works - Under the current contract there is a facility for other organisations such as Parish Councils to arrange and pay for works to be delivered by the contractor. At times the response times for third party works (internal & external) have been long/slow and this may need improving if this facility is retained within the contract.

Management of Utility Company reinstatement of works. The poor quality and timeliness of utility reinstatement work has featured in a number of scrutiny reviews. Are there any measures that could be taken in the new contract to strengthen the approach to this issue?

Knowledge and Management of the Drainage Asset – Work should continue to gain a full understanding of the location and condition of the highway drainage network.

Road Markings – Consideration should be made for the provision of additional resources within the contract core services for this category of work.

Road Repairs - There is a perception that the Council is not taking the easy approach to how repairs are prioritised. The process of managing repairs of potholes, particularly in times of poor weather or backlogs of works, may need reviewing (e.g. by using a process mapping approach). The use of innovation and a flexible approach to road repairs (e.g. use of jet patching and new techniques) should be encouraged in the new contract.

Climate Change – The new contract should take into account the Council's target for achieving carbon neutrality and include measures such as reporting the carbon footprint of the contract and the use of measures to reduce carbon emissions, such as electric vehicles and alternatively powered zero emission vehicles, in the delivery of the contract.

Appendix 2:

Scope and terms of reference of the reference group

The Reference Group was established to:

- Act as a critical friend and provide input into the key stages of the Highway Service Re-procurement Project;
- Comment on the services to be included in the contract and the size and role of the client function;
- Provide input into the development of strategic outcomes and key performance indicators for the new contract;
- Review and comment on the contract model, Outline Business Case (OBC) and Detailed Business Case (DBC) prior to their approval by Cabinet;
- Represent wider Members' views on the key elements, delivery and performance of the contract and to advise on the ways to disseminate information about the development of the new contract to Members.

Reference Group Membership and project support

Reference Group Members: Councillors Bob Bowdler (Chair), John Barnes, Godfrey Daniel and Andy Smith.

The Project Manager was Martin Jenks, Senior Democratic Services Adviser.

Phil McCorry, Business Improvement Manager provided ongoing support to the Reference Group throughout the review.

Reference Group meeting dates

Reference Group meetings – 27 May 2020, 16 July 2020, 8 September 2020, 29 September 2020 and 2 November 2020

Knowledge Bite sessions – 11 June 2020, 30 June 2020, 8 July 2020.

Witnesses providing evidence

The Reference Group would like to thank all the witnesses who provided evidence in person:

ESCC officers

Karl Taylor, Assistant Director; Dale Poore, Contract Manager Highway Infrastructure Services; Phil McCorry, Business Improvement Manager; Ruby Brittle, Stakeholder & Engagement Manager.

External Advisers

Simon Wilson, Proving Services

Evidence papers

Item	Date considered
Provider Market Review & Strategic Options Review (Options Appraisal) - Interim Findings	16 July 2020

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