

London Borough of Enfield

Operational Report

Report of **Richard Eason – Healthy Streets Programme Director**

Subject: **TfL London Highway Maintenance and Projects Framework Contract**

Director: **Doug Wilkinson, Director of Environment & Operational Services**

Ward **All**

Key Decision: **KD 5358**

Purpose of Report

1. This report provides details of a proposed call off contract to be entered into with Tarmac Kier Joint Venture (TKJV) under the Transport for London (TfL) London Highway Maintenance and Projects Framework Contract (HM&P).

Proposal(s)

2. It is recommended that:
 - approval is given to form a call off contract, under the HM&P Contract with TKJV, who is the successful contractor for the TfL north London region, to become effective as soon as possible.
 - the call-off contract is used for the delivery of Healthy Streets projects and other improvement schemes, design and consultancy services, as appropriate, as soon as the contract becomes effective.
 - the call-off contract is used, if required, to deliver engineering and associated works for other service areas within the Council and, where appropriate, for external clients as soon as the contract becomes effective.
 - the Healthy Streets Programme Director be the Service Manager within the Contract. The Service Manager will delegate contractual functions in accordance with the Conditions of Contract.
 - the call off contract is entered onto the London Tenders Portal in order to be included in the Council's Contract Register.

Reason for Proposal(s)

3. This will allow for the building of a long-term relationship with a contractor specifically for the delivery of Healthy Streets projects, which in the main are currently funded by TfL. It can also provide support and further resilience to the other highway maintenance, engineering, traffic and transportation work delivered through other contracts.

Relevance to the Council's Plan

4. The contact will strengthen the contractor delivery of Healthy Streets projects which aims to make active travel safe accessible for people who live, work and visit Enfield. This supports all three of the Council's priorities –

Good homes in well-connected neighbourhoods – delivering new cycling infrastructure and improving conditions for walking supports end to end journeys by walking and cycling, enhances connections to public transport services and connects residents with town centres. Working in partnership with neighbouring boroughs will improve connectivity with other neighbourhoods and opportunities nearby and enhances Enfield's accessibility to those arriving from outside the borough boundaries.

Safe, healthy and confident communities – improvements for walking and cycling and the provision of space for active travel seek to address road safety concerns and can reduce air pollution. There is also good evidence to show that active lifestyles lead to improved health outcomes. Enfield Healthy Streets will help to deliver confident communities through its focus on community engagement and involvement, encouraging active citizenship through participation in project engagement and consultation as well as in community partnerships and events.

An economy that works for everyone – improving walking and cycling facilities will make a positive contribution to transport equity in Enfield. Walking and cycling are low cost modes of transport that can improve access to opportunities. Enfield Healthy Streets will support the creation and sustenance of accessible and vibrant town centres enabling wider town centre public realm enhancements and other place making opportunities.

Background

5. The HM&P Contract is the successor to the former London Highways Alliance Contract (LoHAC) which ended on 31st March 2021 and delivered a number of Cycle Enfield major schemes and other environmental improvements, which are now continued under the Healthy Streets programme.
6. TfL undertook an OJEU compliant procurement process under the Public Procurement Regulations 2015, using the Competitive Procedure with Negotiation (CPN). This provided TfL with the option to negotiate relevant aspects with the suppliers to optimise delivery solutions, explore cost savings and secure best value.

7. Three framework contracts were tendered by TfL, London - north, south and central. A robust selection process was followed, with checks undertaken, to ensure that suppliers retain both the operational and financial capacity and capability to meet the requirements of a London sector wide contract. As part of the tender process, suppliers were invited to submit initial tender submissions (ISIT) which comprised full financial and quality submissions. Following conclusion of negotiations based on these submissions, suppliers were invited to review their initial submissions and submit final tender submissions (ISFT). The financial and quality evaluation was conducted at both stages.

Main Considerations for the Council

8. The framework allows Enfield to enter into its own call off contract with TKJV. Enfield will have direct ownership of the call off contract and be able to manage it and set priorities, whilst benefiting from the London-wide contract documentation, a common specification and a consistent approach. There is no need for Enfield to undertake its own tender exercise.
9. TKJV's schedule of rates were evaluated by TfL as part of the tender process. They have also been compared with other contract rates currently being used within Enfield. Details of this comparison are contained in Part 2 of this report.
10. Once entered into there is no obligation to use this contact, but it does provide a further contractor resource at the Council's disposal, thereby increasing the Council's resilience and ability to meet work programmes. Equally it will be supported by the Council's other contracts. For any given scheme or project, an assessment can be made across the available contracts and the most advantageous and cost effective contract used.
11. The contact is based on the NEC4 Term Service Contract, June 2017, Option A (priced contract with price list) and Option C (target contract with price list). It is intended that Option A, which essentially provides for lump sum tasks, is used for Enfield's Healthy Streets, TfL funded projects. Remeasurement is also possible using this contact and could be used for other projects. The framework contract is for eight years from 1st April 2021, with the option to extend for a minimum of two years and a maximum of four. It is anticipated that the call off contract would run until the end of the framework contract.
12. The projects undertaken under the contract will be dependent on the approved Healthy Streets programme. This estimated to be in the region of £2m annually and therefore £23m over the lifetime of the contract.
13. The contract contains a limited liability clause. This has been discussed with the contractor and a risk assessment undertaken to establish an appropriate amount based on the type of works to be undertaken and mitigating measures which would be adopted by an experienced contractor. The waiver of a parent company guarantee and financial bond is also considered appropriate based on the financial standing of the contractor and the payment procedure. For any works undertaken, payment will only be for works

completed. The approval of the Executive Director, Resources has been obtained to these.

Safeguarding Implications

14. There are no predicted safeguarding implications associated with this report.

Public Health Implications

15. The Council's Healthy Streets programme supports regional and national policies and strategies that seek to reduce traffic congestion and increase levels of physical activity. Legislation and the contract specification require the contractor to minimise health risks (noise, dust, fumes, etc.) to the work force and the general public.

Equalities Impact of the Proposal

16. The contractor is, under the terms of the framework contract, required to submit a Strategic Labour Needs and Training Plan for the approval of TfL. Within this TKJV had to indicate how they would meet the DfT's Transport Infrastructure Skills Strategy (published in 2016) targets as follows: -

20% of new entrants to engineering and technical apprenticeships in the transport sector to be women by 2020, and to achieve parity with the working population at the latest by 2030

20% increase in the number of BAME candidates undertaking apprenticeships by 2020.

17. There is also a requirement under the framework contract to produce a social value plan and for the Enfield Call Off Contract discussions have commenced with the contractor regarding the possible employment of apprentices from within the borough, inclusion of diversity training and contributions to Enfield's Community Chest. The value of work provided to the contractor is likely to be less than is economically viable for the contractor to recruit apprentices specifically for the call off contract and, in the case of contribution to the Community Chest is likely to be linked to performance incentives.

18. Local authorities have a responsibility to meet the Public Sector Equality Duty of the Equality Act 2010. The Equality Act 2010 gives people the right not to be treated less favourably because of any of the protected characteristics. The Public Sector Equality Duty requires the Council, in the exercise of its functions, to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

19. It is important to consider the needs of, and potential impacts on, the diverse groups with protected characteristics when designing and delivering services or budgets so people can get fairer opportunities and equal access to services.

20. The Council aims to serve the whole borough fairly, tackle inequality and protect vulnerable people. The Council will promote equality of access and opportunity for those in our communities from the protected characteristic groups or those disadvantaged through socio-economic conditions. Enfield Healthy Streets can make a valuable contribution to transport equity, equality and inclusion in the borough. Equality Impact Assessments (EQIAs) will be required at the level of individual projects within the overall Enfield Healthy Streets programme. Enfield Healthy Streets aims to align itself with EQIA best practice by considering how those with protected characteristics may be affected by a project from the very early stages of project development (i.e. from feasibility design stage) and responding to this throughout the process of design. Individual EQIAs will be published for each project. Active travel is a low-cost form of transport. Enabling and supporting residents to walk and cycle will help them to access local services, education, training and employment. In parts of the borough where the Public Transport Accessibility Level (PTAL) is low, walking and particularly cycling can help residents to access public transport for longer journeys.

Environmental and Climate Change Considerations

21. The Council's Healthy Streets programme supports regional and national policies and strategies that seek to respond to the climate emergency, reduce traffic congestion and enable a green recovery to the pandemic. TKJV are required to produce and maintain for the duration of the contract an Environmental Management System and an annual Environmental Action Plan, through which they are required to meet criteria in relation to reducing carbon emissions and water usage, designing out waste, travel plans, biosecurity and the identification, mitigation and recording of environmental impacts.

Risks that may arise if the proposed decision and related work is not taken

22. Whilst Enfield has in place a number of contracts to deliver highway maintenance schemes and projects, this does not provide a dedicated contractor resource for the delivery of the Healthy Streets programme and enable the building of a long term client / contractor relationship for this specific work.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

23. The key risks and their mitigation are shown in the table below

<i>Risk Category</i>	<i>Comments/Mitigation</i>
<i>Strategic</i>	<p>Risk: Contractual</p> <p>Mitigation: The London North HM&P Framework contract is based on standard NEC conditions of Contract and Standard Specification for Highway Works with additional clauses inserted by TfL to provide for highways works in London.</p> <p>Risk: Capacity to deliver the Council's programme.</p> <p>Mitigation: The award of the London North HM&P Framework contract to TKJV has followed a robust selection process that has ensured that the contractor has the capacity to deliver. In addition, Enfield has in place other contracts with other contractors which can be called upon.</p>
<i>Operational</i>	<p>Risk: Disruption during works.</p> <p>Mitigation: The contractor has experience of working on the highway in a busy urban environment. Works are planned, and residents / businesses informed. Works will be co-ordinated to take account of other work in the area.</p>
<i>Financial</i>	<p>Risk: Cost escalation / payment</p> <p>Mitigation: The contractor through Option A holds the risks for inaccuracies in quantities within a lump sum price, subject to the client's responsibility for accuracy of the scope itself. Payment to the contractor is linked to satisfactory completion of an item or items only.</p>
<i>Reputational</i>	<p>Risk: Poor delivery of the programme</p> <p>Mitigation: TKJV is a joint venture of two experienced civil engineering contractors and have satisfied TfL's quality criteria. TKJV will be under direct supervision and management of council officers.</p>
<i>Regulatory</i>	<p>Risk: Failure to comply with statutory requirements.</p> <p>Mitigation: TKJV is an experienced contractor in compliance with all environmental, street works and health and safety requirements.</p>

Financial Implications

24. This report provides details of a proposed call off contract to be entered into with Tarmac Kier Joint Venture (TKJV) under the Transport for London (TfL) London Highway Maintenance and Projects Contract (HM&P). The estimated cost for implementing the schemes will be met from TFL or other grant allocations.

25. Expenditure once approved by Transport for London, will be fully funded by means of direct grant from TfL; hence no costs fall on the Council.
26. The release of funds by TfL is based on a process that records the progress of works against approved spending profiles. TfL make payments against certified claims that can be submitted as soon as expenditure is incurred, ensuring that the Council benefits from prompt reimbursement of any expenditure

Legal Implications

27. The Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles. The recommendations in this report will enable the Council to fulfil its duty to provide for the delivery of the Healthy Street and other improvement schemes.
28. The Council must comply with all requirements of its Constitution, Contract Procedure Rules (“CPRs”) and the Public Contracts Regulations 2015 (“Regulations”). The CPRs permit the use of frameworks provided best value can be demonstrated, and the Council has the right to access the Framework. The Council will need to ensure that any funding received, is utilised in accordance with all relevant grant funding conditions, including any conditions as to the procurement requirements to be observed in the award of the contract.
29. The Council must be satisfied that the terms and conditions of the Call off Contract to be entered into with TFL especially in relation to liability is acceptable to the Council and Legal advice should be sought where required.
30. As this is a key decision the Council must comply with the key decision procedure. The approval from the Procurement and Commissioning Board must be obtained.
31. Throughout the engagement with TFL and TKJV the Council must comply with its obligations of obtaining best value, under the Local Government (Best Value Principles) Act 1999. The Council must keep a clear audit trail of its decision to award these services to TFL & TKJV to demonstrate that best value has been, and will continue to be, obtained for the Council.
32. There is a requirement to obtain sufficient security (for example a performance bond or parent company guarantee) for every contract exceeding £1million in value. Evidence of the form of security required, or why no security was required, must be stored and retained on the E-Tendering Portal for audit purpose. For contracts over £1million where the provider/contractor cannot provide security, but the Council has no acceptable alternative provider or has decided to accept the level of risk, then the Executive Director of Resources must approve the financial risk prior to any award. The relevant Authority Report must set out the reason why it is

proposed that the contract should be awarded despite absence of security and what measures are to be taken to manage this risk.

33. CPR 6 (Insurance) states that contracts with direct advice and/or design services provided by the supplier (including all consultancy and construction arrangements) must have a requirement for professional indemnity insurance. All contracts are expected as a minimum to have employer's liability insurance and public liability insurance. The Service Department must undertake a risk assessment to ensure that the levels of insurance are adequate seeking advice from the Council's Insurance team.

Workforce Implications

34. This contract is for projects only. TUPE obligations have already been resolved with the transfer of the routine and reactive workforce under the former LoHAC contract to the current provider. There are no implications for Enfield staff.
35. The contractor has produced a Strategic labour needs and training plan for the framework contract and TfL's own work. Enfield are in discussion with TKJV regarding the extension of this to Enfield's projects and the employment of a local apprentice. This will be dependent on the value of work provided to the contractor on a continuous basis to be economically viable.

Property Implications

36. None

Procurement Implications

37. All procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
38. The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.
39. All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.
40. Where a contract has not been procured via the LTP, then the signed contract, call off agreement and supporting DAR etc, must be sent to procurement.support@enfield.gov.uk who will create a record in the LTP and promote to contract finder to ensure the Council meets its transparency obligations.

41. The CPR's state that contracts over £100,000 must have a nominated contract owner in the LTP, and for contracts over £500,000 there must be evidence of contract management, including, operations, commercial, financial checks (supplier resilience) and regular risk assessment uploaded into the LTP.
42. Any use of framework must be in line with the framework rules and must be legally compliant and accessible by the council.

Options Considered

43. The Healthy Streets programme requires the delivery of a large number of schemes over the coming years to enable walking and cycling across Enfield and deliver the transformation required. This will only be possible with a reliable and dedicated delivery partner. The alternative option is to undertake a full, compliant, tender exercise. The HM&P call off contract, however, will provide a contractor partner appointed by TfL, who, as well as Framework Contract Client, will be the project financier for most Healthy Streets projects.

Conclusions

44. The Healthy Streets programme requires the delivery of a large number of schemes to enable walking and cycling across Enfield. Major components of the programme include the creation of high-quality routes for cycling, quieter neighbourhood, town centre improvements streetscape works and school streets. It is essential to have greater contractor resource to deliver the package of measures without pressurising existing contracts and the schemes they are delivering. The use of TfL's already established framework contract is the most efficient way to achieve this.

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Appendices

Confidential Part 2 Report

Background Papers

None