

# **WEST NORTHAMPTONSHIRE COUNCIL CABINET**

**3 May 2022**

**Cllr Larratt**

**Portfolio Holder for Environment, Transport, Highways & Waste**

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<b>Report Title</b>	<b>Highways Contract Procurement Update</b>
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## **Contributors/Checkers/Approvers**

<b>West MO</b>	Catherine Whitehead	15 April 2022
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## **List of Appendices**

**None**

### **1. Purpose of Report**

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- 1.1. To update the Executive on the project to procure a new highways contract for West Northamptonshire Council (WNC).

- 1.2. To delegate authority to award the contract to the bidder which is successful, determined by reference to the published rules, cost and quality criteria, to the Executive Director Place, Economy and Environment and Executive Director Finance, in consultation with the Portfolio Holder for Environment, Transport, Highways and Waste Services, and the Portfolio Holder for Finance.

## **2. Executive Summary**

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- 2.1 The Highways and Transport services and associated contract have continued as a hosted arrangement since Vesting Day, provided by West Northamptonshire Council to North Northamptonshire Council until the conclusion of the re-procurement of new contractual arrangements.
- 2.2 The majority of the Council's highways services are currently provided through a contract with KierWSP, which is hosted by West Northamptonshire Council and is due to end mid September 2022.
- 2.3 The procurement of new arrangements for these services commenced pre-vesting day with approval from Northamptonshire County Council as the authority responsible for the contract, but also in discussion with all predecessor authorities via governance arrangements in place prior to Vesting Day.
- 2.4 Delegated authority to make decisions related to the procurement were previously given to representatives of the County Council, and these delegations were refreshed for West Northamptonshire Council via a Cabinet paper in July 2021. The delegations enabled the procurement to progress until a decision to award the contract was required, with the intention that the award of the contract will be the subject of a further Cabinet report (this report).
- 2.5 The procurement process is being managed jointly by West Northamptonshire Council and North Northamptonshire Council and will result in two contracts being awarded, one for each Council.
- 2.6 The contract resulting from this procurement will be one of the most significant that the Council awards due to its high value and because it provides essential services for all residents. Bidders have been asked to address a number of key Council outcomes as part of their submissions, ranging from the delivery of safe, legal, customer-focused and value for money services through to making tangible contributions to the Council's commitment to Social Value and its response to Climate Change and the Environment.
- 2.7 The procurement process is governed and managed through a robust and systematic programme approach. The procurement has progressed positively through the informal market engagement discussions, followed by the formal selection questionnaire, Invitation to Submit Outline Solution (ISOS), Invitation to Submit Detailed Solutions (ISDS), ISDS Extension<sup>1</sup>, Invitation to Participate in Final Dialogue (IPFD), and Invitation to Submit Final Tender (ISFT) stages.

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<sup>1</sup> Where bidders were asked to consider the costs and quality benefits to West Northamptonshire Council and North Northamptonshire Council of limited co-operation related to the service across Authority areas should they be successful in both Lots.

- 2.8 Three bidders have submitted Final Tenders, which are currently being evaluated and it is anticipated that the Council is in a good position to award a contract at the end of the process.
- 2.9 Therefore, delegated authority to award the contract to the preferred bidder, which will be identified by the application of the evaluation process, is proposed.
- 2.10 The procurement timetable indicates that the contract award will be made in May 2022, in time for the services to commence under the new contract from 12 September 2022.

### **3. Recommendations**

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- 3.1 It is recommended that the Cabinet/Committee:
- a) Notes the continued progress to procure new arrangements for highways and transport services and the readiness to make an award post Final Tender submission and evaluation in May 2022;
  - b) Agrees to delegate authority to the Executive Director Place, Economy and Environment and Executive Director Finance, in consultation with the Portfolio Holder for Environment, Transport, Highways and Waste Services, and the Portfolio Holder for Finance to award the contract.

### **4. Reason for Recommendations**

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- a) The Council has a statutory duty to provide highways services as set out in the Highways Act 1980;
- b) The Council must provide these services and the Council is procuring a new contract in order to do so in the future;
- c) Failure to make an award will have a number of implications for the Council, not least the need to establish and mobilise alternative delivery arrangements from the end of the KierWSP contract in September 2022 and the cost and risk associated with commissioning and /or delivering an alternative solution in the medium to long term;
- d) The delegations requested will enable the procurement process to proceed with appropriate governance through to its conclusion.

## **5. Report Background**

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- 5.1 The procurement of new arrangements for these services commenced pre-Vesting Day with approval from Northamptonshire County Council as the authority responsible for the contract, but also in discussion with all predecessor authorities via governance arrangements in place prior to Vesting Day.
- 5.2 The procurement is being conducted via a competitive dialogue process, which has a minimum number of stages which have been tailored to meet the needs of the Council and ensure the best outcome.
- 5.3 Two contracts will be awarded as a result of this single procurement process: one for West Northamptonshire Council and one for North Northamptonshire Council.
- 5.4 The resulting contract for West Northamptonshire will be one of the highest value contracts awarded by the Council (approx. £30m pa) and it provides high profile services which are used by virtually all of the Council's residents and supports the economy. It is therefore very important that the Council conducts a rigorous process to select the best organisation to act as its contractor.
- 5.5 Two separate highways contracts are expected to be more expensive than the current one single contract. The Council has included additional budget from the commencement of the contract to allow for this.
- 5.6 Consideration of residents' needs have been placed at the heart of the procurement process, whilst also balancing the desire for high quality, safe and legally-compliant services and the cost of providing the service.
- 5.7 The evaluation of the tenders is based on an equal weighting (50:50) on price and quality representing the Council's commitment to ensuring value for money whilst maintaining a high quality service for its residents.
- 5.8 The contracts allow for a 7-year core contract period, with potential for extensions to total length of up to 14 years. Extensions comprise up to three years in the first 7-year core period based on performance, and an additional 4-year option at the discretion of the Council.
- 5.9 Prior to the formal procurement process, two 'market engagement' sessions were held with potential suppliers to signal the intention to procure this contract. These sessions enabled prospective bidders to be reassured about the formation of the two new unitary Councils that would result in a change in the procuring organisation part way through the process, which is highly unusual.
- 5.10 The initial stage of the formal procurement process was for prospective organisations to complete a 'Selection Questionnaire'. This step was completed in February 2021. Four bidders progressed to the following stage, which was an Invitation to Submit an Outline Solution (ISOS). ISOS enabled the first opportunity for dialogue sessions with the bidders so the Council could find out more about their potential tender and possible added value.
- 5.11 The ISOS stage was completed on schedule, with bidders' responses received in April and evaluated by the end of May 2021. This timing coincided with the elections. The procurement

process was consequently paused to enable confirmation of the Leader and Executive Members/Cabinet Members in both Councils, who have a key role to play in the governance of the procurement.

- 5.12 There was no 'down selection' of bidders at the end of the ISOS stage, and following further rounds of dialogue, all four bidders submitted detailed costs and quality solutions in September 2021 as part of an Invitation to Submit Detailed Solutions (ISDS). They also submitted a Variant A price setting out potential 'bulk discount' efficiencies were they to be successful in both Lots.
- 5.13 Both Councils also considered wider options to permit the bidders to share some elements of the service delivery across the two authority areas in order to reduce the overall cost of the contracts for each Council. Given the combined value of the individual contracts is expected to be higher than the current single contracts, these financial benefits may result in cost avoidance, rather than cashable savings for each Council.
- 5.14 In order to secure these financial benefits through co-operation, the Councils introduced a focused 'ISDS Extension' phase, where bidders were given a six week window to design and submit an additional integrated solution (a 'Variant B') submission for consideration. A prerequisite of the same bidder being successful in both Lots was implicit to the approach. If that occurred, then a threshold value of a 5% cost avoidance for both Councils (between the otherwise winning bids and the integrated solution submissions) was required to 'trigger' Variant B. In the event, neither criteria were met at the ISDS Extension phase.
- 5.15 The bidder scoring fewest marks in the ISDS/ISDS Extension phase was de-selected in January 2022. The remaining three bidders were invited to Participate in Final Dialogue (IPFD), and an Invitation to Submit Final Tender (ISFT) was issued in early April 2022. Lot 1, Lot 2 and Variant solution options (A and B) remain on the table at Final tender stage, with the same thresholds/rules applied as at ISDS Extension. Final Tenders were received on 19 April and evaluation and moderation (scheduled to be) completed in mid-May 2022.
- 5.16 Award recommendations will be made at conclusion of the evaluation and moderation exercise and it is proposed that the decision to award a contract for West Northamptonshire Council will be made using the delegated authorities which form part of the recommendations within this paper.

## **Governance**

- 5.17 Two contracts will be awarded as a result of this single procurement process: one for West Northamptonshire Council (Lot 1) and one for North Northamptonshire Council (Lot 2). Therefore, Member and officer representatives of both Councils are involved in the governance of the procurement.
- 5.18 A Highways Contract Procurement Steering Group which includes procurement, technical, financial, and legal specialists lead the project on a day-to-day basis. The work of the Steering Group is overseen by a Steering Board, which includes the Executive Directors of Place and the relevant Executive / Cabinet Members for both Councils. The respective Executive Committee / Cabinet in each Council make decisions related to the procurement. Finally, since highways are a hosted service any changes to the hosting arrangements are subject to a decision by the Shared Services Joint Committee.

- 5.19 It is proposed that delegated authority is given to the Executive Director Place, Economy and Environment and Executive Director Finance, in consultation with the Portfolio Holder for Environment, Transport, Highways and Waste Services, and the Portfolio Holder for Finance to take decisions related to the award of the contract and agreeing the service areas which the Council permits the contractor to share across both Councils should they win both contracts, as well as any limits to those sharing arrangements.
- 5.20 The delegations are proposed to enable decisions to be made in a timely manner, and also so that the people taking the decisions have had oversight of the procurement and tenders in sufficient detail to agree to award to the preferred bidder.

#### **Potential for co-operation between the two contracts**

- 5.21 Throughout the procurement, bidders have been keen to emphasise that there are opportunities for economies of scale to both Councils in the event that the same bidder is successful in winning both contracts. This is because of duplication across the two contracts which could be avoided if bidders were permitted to share certain resources across both areas.
- 5.22 Following the formal appointment of Executive / Cabinet Members to both Councils, the Councils, via their Steering Board members, have considered to what extent, if any, they would be prepared to share between the individual contracts to reduce duplication and gain financial benefits for both councils in the event that a single bidder were to be successful in the procurement process. The degree of co-operation would be limited to aspects of the contract which do not reduce the experience or quality of the service experienced by residents but would deliver financial benefits for the Council and its residents. This would enable more funding to be available to spend on the front-line services delivered by the contract which residents do experience and benefit from directly.
- 5.23 As examples, the aspects of the contract which may be acceptable for collaboration that have been discussed include sharing of the contractor's management teams, depots, back office systems, fleet and plant (although branded vehicles would be limited to their respective Council geographies). Discussions between Councils indicated that there was a preference for direct and separate control by each Council of customer and Member-facing communication and engagement, separate key performance indicators tailored for each contract and that each Council should be able to take decisions regarding the extension of the contract independently.
- 5.24 In order to ascertain the extent of potential cost avoidance available due to this co-operation it was necessary for bidders to submit a 'Variant B<sup>2</sup>' bid. Initial indications are that these avoided costs may be around 7% per annum, which for a contract of this size (£30m pa) may result in considerable monetary value. A 5% minimum threshold was agreed in consultation with elected members, which will be a minimum cost reduction that bidders must achieve for both Councils in order for their variant bid to be evaluated by the procurement team. This will ensure that the Councils are receiving an acceptable level of saving in return for giving the bidders the flexibility to share certain elements of the service across the two contract areas.
- 5.25 It is important to note that even if the award of a variant bid were to be the outcome of the procurement process, two separate contracts will be awarded, one for West Northamptonshire

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<sup>2</sup> A 'Variant A' equivalent has been included in the pricing model since ISDS stage to allow bidders to highlight bulk discount savings were they successful in both Lots. Variant B focus on wider integration cost avoidance opportunities.

Council and one for North Northamptonshire Council. In either case, the successful Contractor(s) will be required to agree programmes of work and work priorities with each Council and ring-fence accounting for the use of resources (even if these are shared) so that each Council is correctly invoiced for work carried out. All of the options for co-operation do not affect these aspects which are crucial for each Council's autonomy.

### **Concluding the Procurement Process**

- 5.26 Final Tender submissions were submitted in April 2022. Bidders produced a bid, including tender prices, for stand-alone contracts for West and North Northamptonshire Councils, which will not include any sharing of resources across the two areas. They also produced a Variant A price (economies of scale for winning both areas) and a Variant B price *and* quality submission (limited degree of service integration between both areas).
- 5.27 Evaluation of the tendered solutions has been in accordance with pre-determined criteria which include awarding 50% of the marks based on price and 50% of the marks based on the quality of the submitted tender.
- 5.28 Identification of the preferred bidder will be made by applying the rules and criteria that were agreed by the Councils and set out in the documents issued to the bidders.

### **Timescales**

- 5.29 The proposed timetable for the remainder of the procurement is set out in the table below. Following award, the successful provider will be given a 3-month mobilisation period prior to service commencement on 12 September 2022. This aims to ensure the seamless transition of the outgoing contractor to the new contractor

<b>Procurement Stage</b>	<b>Date</b>
Contract Award	June 2022
Mobilisation	June to September 2022
Service Commencement	12 September 2022

**Table 1. Proposed Timetable**

### **Management of the New Contract**

- 5.30 The new contract will be managed by an enlarged contract management team which will be led by the Service Manager who will be appointed over the summer and will have experience of managing similar NEC4 Term Maintenance Contracts.
- 5.31 The contract contains a tiered approach to performance management including Strategic Indicators which will be used largely to decide if extensions are earned, Tactical Indicators which will be used to manage any deductions to be applied due to poor performance and (in cases of consistent poor performance trigger termination events) and Operational Indicators which will be used to manage day to day performance.
- 5.32 There is an expectation which has been shared with the bidders that there should be a significant improvement in communication with Members, stakeholders and residents to increase transparency and to ensure that the outcomes of the Service are fit for purpose. The

Scope and Specification and accompanying performance regime has been drafted to ensure that this comes forward.

## **6. Issues and Choices**

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- 6.1 Statutory duties must be fulfilled through these contractual and hosting arrangements. There is therefore not an option whereby the Council can allow the existing arrangement to expire prior to the new contract commencing.
- 6.2 The Council has formally committed to procure highways services from the market, and the bidders have committed significant resources to the procurement exercise. Withdrawing from the procurement is likely to result in legal challenge from bidders who will seek to recover their costs. Terminating the current procurement exercise and taking a different approach to providing highways services at the end of the current arrangements is not recommended.

## **7. Implications (including financial implications)**

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### **7.1 Resources and Financial**

- 7.1.1 The current highways contract was procured 14 years ago, and although the costs have been subject to inflationary increases, it is reasonable to expect that the costs of the new contracts procured will be higher, partly due to the fact that two contracts (one for each Council) are likely to be more expensive than one. There may be economies of scale if Variant A or Variant B is awarded which will partially reduce these anticipated increased costs.
- 7.1.2 The new contract for West Northamptonshire will be one of the highest value contracts awarded by the Council at approximately £30m pa. This includes both revenue and capital expenditure.
- 7.1.3 The anticipated increased costs have been taken into account in the 2022/23 budget setting process. An additional budget has been built into the base budget on a permanent basis for 2023/24, and a one-off amount has been built into the 2022/23 budget to cover the part year effect of the new contract in that year. The additional budget was the best estimate of the additional costs at the time. The Council has also increased the budgets for highways and transport services, including investing in an increased team of officers to manage the contract and provide the services which the Council provides directly.
- 7.1.4 The overall procurement project budget is approximately £1.2m split between Northamptonshire County Council (up until March 2021), West Northamptonshire Council and North Northamptonshire Council.
- 7.1.5 There will be demobilisation costs towards the end of the current contract, an element of which will fall to the Councils. These will be expended within 2022/23 and provision has been made for these costs within the 2022-23 budget.
- 7.1.6 Planning for disaggregation and TUPE transfer of officers from the hosted West Northamptonshire Council arrangements to North Northamptonshire Council have commenced in good time to allow consultation and a smooth transfer to take place. It is the intention that both Councils will have fully disaggregated and independent Highways and Transport teams and,



as noted earlier, West Northamptonshire Council has invested in this team to ensure the team has sufficient capacity and resilience.

- 7.1.7 Arrangements are also being finalised to enable the TUPE transfer of operational managers and staff from KierWSP to the new provider(s) on 12 September 2022.

## **7.2 Legal**

- 7.2.1 External Advisors, Antony Collins Solicitors, have advised the Council throughout the procurement process, and procurement officers representing both Councils have been involved in the project team. The Council believes the procurement process has been compliant with legal guidance.

- 7.2.2 As noted earlier, if a variant bid which allows for co-operation between Councils is the successful option at the conclusion of the procurement process, then this will be dealt with using the Highways Co-operation Agreement which is to be entered into by both Councils prior to the 19 April 2022 and upon which elected members were consulted at heads of terms stage.

## **7.3 Risk**

- 7.3.1 There is a risk of challenge associated with the award from unsuccessful bidders. A robust programme governance and management approach has been applied throughout the procurement, with significant transparency in the process from its inception. In addition, legal advice has been received at each key decision point from Anthony Collins Solicitors in liaison with the Councils' Monitoring Officers.

- 7.3.2 There are risks associated with the procurement programme and these are managed by the Steering Group of Officers who take appropriate mitigating action. Until conclusion of the procurement exercise, the key risks associated with the programme remain:

- Pensions & TUPE liability - relevant officers are supporting the identification and mitigation opportunities.
- Procurement cost/budget - mitigated by regular steering group discussions & management of costs with WNC finance colleagues.
- Maintaining competition amongst bidders. Mitigated by a clear process, regular engagement with bidders etc.

## **7.4 Consultation**

- 7.4.1 Elected members have been briefed on and taken decisions regarding the procurement of the new contract since the project was initiated by NCC. This included the involvement of representatives of the shadow authorities via reports, briefings and Members' workshops.

- 7.4.2 Since the formation of the new Councils, relevant Executive / Cabinet Members have been briefed on the procurement and have been involved in the discussions related to the degree of

co-operation between the two contracts, which led to the proposed option for bidders to submit a variant, which may enable cost avoidance. These discussions are enshrined in the Highways Co-operation Agreement between the Councils.

- 7.4.3 It would not be appropriate to consult widely regarding this procurement due to the confidential nature of any procurement process.

## **7.5 Consideration by Overview and Scrutiny**

- 7.5.1 To date, the procurement has not been considered by overview and scrutiny committees.

## **7.6 Climate Impact**

- 7.6.1 Each of the bids are evaluated on their contributions towards Social Value, including climate change and environmental considerations. Together these equate to 15% of the quality scores in the award process (7.5% Social Value and 7.5% Climate Change & the Environment).
- 7.6.2 The new contractor will have set out a set of proposals around how they can directly and indirectly support achievement of the Council's net zero commitment by 2030.

## **7.7 Community Impact**

- 7.7.1 Throughout the dialogue process the procurement team have highlighted the need for the bidders to respond to the challenge of ensuring that residents', stakeholders' and Members' needs are taken into consideration alongside the more technical aspects of the service delivery. This has been reflected in bidders' responses and it is intended that this will lead to a service that is aligned to those needs to a greater extent than the at present.

## **7.8 Communications**

- 7.8.1 West Northants Communications team have published regular updates throughout the procurement process to help keep members informed about progress.
- 7.8.2 Once the preferred bidder is selected and the 'standstill' period is completed then the Council will be able to make an announcement about its new contractor.
- 7.8.3 An all members briefing will be arranged during the mobilisation period to inform members about the new contract.

## **8. Background Papers**

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- 8.1 Northamptonshire County Council Cabinet paper – Highways Contract Update – 12 November 2019.
- 8.2 West Northamptonshire Council – 13 July 2021 Cabinet - Highways Contract Procurement Update.