

Highway Maintenance and Management Services

Briefing note to Sustainability and Transport Overview and Scrutiny Committee, 13 May 2020

1. Introduction and background

- 1.1 This briefing note is to update the committee with the current position regarding highway maintenance and management services.
- 1.2 A commercial settlement reached in June 2019 enabled the council to:
- Confirm that Amey LG would be replaced as subcontractor to Birmingham Highways Ltd (BHL) by 31 March 2020;
 - Ensure that its PFI grant continues while a long-term replacement subcontractor is procured; and
 - Reach a settlement position regarding commercial matters relating to the contract.
- 1.3 The current position is as follows:
- Amey LG was replaced as subcontractor to BHL on 1 April 2020, with Kier Highways taking over.
 - The services within the scope of the contract will therefore be provided as follows:
 - Kier Highways are presently providing inspections, operational and network management services, together with a street lighting replacement programme.
 - In addition, Tarmac are providing programmed maintenance works on surfacing (carriageway and footway).
 - Specific condition surveys on carriageway and footway are to be carried out by PTS.
 - This position is expected to continue until at least June 2021, which is the deadline specified for restructuring the project into a replacement long-term PFI contract (the period from 1 April 2020 to June 2021 is referred to as the "Interim Period").
 - Procurement of a long-term replacement subcontractor has commenced with BHL.
- 1.4 The current contracting structure is shown in Appendix 1 for reference.
- 1.5 Table 1 below shows how services are divided during the Interim Period.

Table 1: Service provision during the Interim Period

Surveys and Inspections	Routine and Reactive Maintenance and Network Management	Programmed Maintenance
Kier Highways <ul style="list-style-type: none">Cyclical and ad hoc inspections:Safety and Service InspectionsElectrical safety testingInventory recordingStructures	Kier Highways All assets: <ul style="list-style-type: none">Routine and cyclical maintenance: minor repairs, cleaning, pruning, etc.Reactive maintenance: to attend / make safe and repair specific items identified as dangerous	Kier Highways Street Lighting: ~2,000 columns to be replaced
PTS Supplemental condition surveys (surfaces and structures)	<ul style="list-style-type: none">Winter maintenanceNetwork management	Tarmac Surfacing: ~£50m across 2020 and 2021

2. Inspections, operational and network management services (Kier Highways)

- 2.1 In entering into the 2019 settlement the council was aware that there was insufficient time to procure a long-term replacement subcontractor. Provision of services during the Interim Period was therefore known to be necessary. After a procurement that took place through the Autumn of 2019 and concluded in early 2020, Kier commenced as interim subcontractor to BHL on 1 April 2020.
- 2.2 Kier's performance in mobilising for the contract and transferring services and nearly 400 staff is highly commendable. That the transfer was achieved on time and with the difficult circumstances experienced towards the end of the mobilisation with COVID-19, but also with relatively little upheaval in service provision, is an important achievement. Amey LG's operational staff also played an important role in supporting this.
- 2.3 The services that Kier is performing are broadly the same in scope as most of those under the PFI contract. The contract under which they are procured is an industry standard one, rather than a PFI contract. The difference between the two is that under a PFI contract council transfers a number of risks to the contractor (principally performance, but also other factors such as supply). Given the limited duration of the contract it was unlikely that contractors would take a high degree of risk and certainly not those involved in PFI contracts (which are predicated on being able to make long-term returns).
- 2.4 The service specification is an interim one, aimed to ensure that there is a reasonable level of service that meets the council's statutory obligations, whilst enabling the Interim Period to be used to stabilise service provision. During this period it is also important that services are managed within the available funding.
- 2.5 At this stage it is too early to take a view on Kier's performance except with regard to mobilisation. After the issues that were experienced with Amey LG's performance there is inevitably a significant amount of work to be done to stabilise services. Whilst the nine-month period between settlement and Amey LG's departure was unavoidable, this will also not have helped.

3. Programmed Maintenance (Tarmac / Kier Highways)

- 3.1 A small number of programmed maintenance schemes were commenced towards the end of 2019 and in early 2020. This was the first programmed maintenance on surfacing that had been undertaken since the Autumn of 2017. These schemes were focused on roads and footways that were in particularly poor condition and had been subject to significant numbers of complaints.
- 3.2 During the Autumn of 2019 the council worked with BHL to make revisions to the Pavement Management Model. This model was at the heart of the investment disputes with Amey LG and it was essential to correct its operation, as well as the approach to programmed maintenance. Progressive updates to the model have enabled the council to confirm that it measures condition more reliably and to an acceptable standard.
- 3.3 During 2020 and 2021 BHL is under an obligation from the settlement to deliver £50m of surfacing schemes. Consultation is now commencing on the first tranche of schemes identified using the condition calculated in the model. These schemes will be designed to different criteria that are intended to provide appropriate outcomes from investment works. Further schemes will continue to be developed from using the model and will be rolled out in due course.
- 3.4 This investment will not however complete the level of investment that the council expected under the PFI contract. Further work on surfacing will still be required by a long-term replacement subcontractor to complete the anticipated investment, probably at least three further years after their appointment.
- 3.5 Whilst over 40,000 street lighting columns were replaced under the contract this still represents less than half of the city's street lighting stock. It is therefore important that investment continues in replacing lights that have not recently been changed to ensure that

the asset is managed appropriately. Accordingly, Kier is presently programming the replacement of nearly 2,000 street lights during the Interim Period.

- 3.6 Finally, the Interim Period will be used to update information regarding the condition of carriageways and footways. PTS has been contracted by BHL to undertake condition surveys to provide this updated information. This will enable the Pavement Management Model to continue to be updated and priorities reflected according to condition.

4. The impact of COVID-19

- 4.1 There are three potential ways in which COVID-19 could affect the services, where:
- i. Significant numbers of staff are affected and absent from work;
 - ii. Services are reduced to an emergency level to reduce the number of people travelling; or
 - iii. Restrictions on working practices are required to be implemented such that the work cannot practically be undertaken.
- 4.2 Despite the extensive impact that COVID-19 is having on everyday life, none of these have applied to date. Highway maintenance and management services continue to be provided at nearly full levels. The exception is that certain subcontracted painting and tree maintenance works have been temporarily suspended.
- 4.3 Standard safe working practices are in place nationally throughout the construction industry. In addition, Kier has amended site operating procedures to make them applicable to working on an open highway network (rather than closed construction sites, for which the national practices are more applicable). These arrangements utilise social distancing where possible and take specific mitigating measures where crews are required to operate out of shared vehicles.
- 4.4 It is clear that there will be other impacts of COVID-19 on the position regarding long-term procurement and these are covered in 5.5 below.

5. Procurement of a long-term replacement subcontractor

- 5.1 Under the 2019 settlement, BHL has until June 2021 to procure a long-term replacement subcontractor. This subcontractor is to resume provision of the services under a modified PFI contract, through to June 2035. It is important to emphasise that whilst this is BHL's procurement, it must deliver services that are acceptable to the council and so the council has a significant role in this.
- 5.2 Despite the fact that a future contract is likely to be worth around £1bn and will run for 14 years, it is clear that changes will be required to the existing contract to attract bidders. Whilst there was little truth in many of the media stories that have circulated regarding the financial adjustments for non-performance to which Amey were subjected, Amey did suffer significant losses.
- 5.3 For a successful procurement to deliver a value for money contract there must be appropriate competitive tension between bidders throughout the process. The council and BHL have been engaging informally with those in the highway services marketplace that have appropriate capabilities to deliver a contract such as this. This engagement has been to understand the issues that might cause those parties not to participate in a procurement.
- 5.4 Those discussions have indicated that whilst potential bidders have rational insight into why Amey suffered losses, they are keen to ensure that they do not take on commercial risks that they do not understand or cannot manage. In a marketplace where there are opportunities to bid for other projects that offer fewer risks than a PFI contract, bidders will be understandably cautious.

- 5.5 The COVID-19 pandemic has added a further complication to this:
- i. The initial hiatus in March 2020 required businesses to adapt rapidly to different circumstances in order to continue functioning and earning revenue. This became the focus of all of the bidders with whom the council and BHL were engaging, rather than bidding for new work.
 - ii. The duration and full extent of the disruption is still unknown:
 - (a) Whilst the operational services have mostly been able to continue, this is a different set of activities to putting together a bid and negotiating a new contract. It is uncertain what impact this will have on the ability of bidders to undertake due diligence and put bids together.
 - (b) A number of the businesses who may bid are multinational companies. Uncertainty and the position regarding their overseas corporate parents is a limiting factor.
 - (c) The effect on the supply chain to the larger businesses, many of whom are smaller, local businesses with limited capacity to deal with issues such as this is not yet known.
 - iii. Tendering a contract during significant market uncertainty can be expected to lead to exaggerated risk pricing. Whether reasonable value for money can be obtained for the council in these circumstances must remain under question.
- 5.6 Despite this uncertainty the council continues to work with BHL to make appropriate changes to the contract. These changes are with the aim of making the contract more commercially acceptable, whilst still ensuring that there is adequate transfer of risk to the contractor and SPV. In addition, a number of changes are being made to deliver improved outcomes, not least the changes that are needed to how programmed maintenance in surfacing is done in the future.
- 5.7 The Cabinet Member for Transport and Environment has formed an informal member working group to review changes to the contract, led by Councillor Mike Leddy. All members have considerable experience of highway issues and have provided feedback on the priorities that they wish to see addressed in a future contract. These issues form a combination of matters that require changes to the contract and others that require better performance and behaviour from the contractor. Some are also challenging issues for any highway service and for which there is no immediate panacea through changing the contract. Once a proposed set of changes to the contract is finalised, these will be discussed further with members to validate these.
- 5.8 Ultimately, changes to the contract must deliver a level of service that the council is satisfied meets its needs. The cost of those services and what is delivered must represent the best value in the circumstances and must represent value for money to the public purse. The revised contract will be subject to a business case with government (Department for Transport and HM Treasury) for continuing PFI credit. PFI credit will not be increased, although if the revised contract does not deliver a similar level of capital investment it is possible that PFI credit could be reduced.
- 5.9 Ultimately, in the event that a PFI contract that is acceptable to all parties cannot be re-procured:
- i. The PFI contract is likely to end;
 - ii. BHL will cease to exist and money left in the company (principally, settlement payments to date from Amey) will be paid to BHL's creditors in order of priority, starting with the outstanding lending of the banks, debt to the council and then other creditors;
 - iii. The council's £51.9m per annum PFI grant will cease and the council will revert to its revenue budget plus capital spending bid for under the Local Transport Plan.
- 5.10 In considering alternative courses the council continues to evaluate its options in comparison to this position.

6. Summary

- 6.1 The council has taken positive steps to ensure that Amey LG has been replaced and to mobilise a replacement interim subcontractor (Kier). Kier's effort to mobilise has been commendable and there is a positive approach to addressing the challenges that exist with performance. Although disruptive, these steps are all necessary to address an issue of significant and sustained non-performance of a major contract as the council has faced.
- 6.2 Investment in surfacing on the network is being recommenced during the Interim Period alongside this. This needs to provide a basis to support progress towards a full investment programme under a long-term replacement subcontractor.
- 6.3 There clearly remain a number of challenges to procure and deliver a revised PFI contract, not least the uncertain market environment at present. These challenges will remain under review against the alternatives as the council takes matters forward.

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Appendix 1: Current contracting structure

