

Birmingham City Council

Report to Cabinet

8 November 2022



Subject: Highway Maintenance and Management PFI Contract

Report of: Rob James, Strategic Director, City Operations

Relevant Cabinet Members: Cllr Liz Clements, Transport
Cllr Yvonne Mosquito, Finance and Resources

Relevant O &S Chair: Cllr Chaman Lal, Sustainability and Transport
Cllr Akhlaq Ahmed, Resources

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 010421/2022		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Exempt Appendix (Appendix A)		
Exempt information paragraph 3. Information relating to the financial or business affairs of any particular person (including the council)		

1 Executive Summary

- 1.1 This report updates Cabinet on progress with the delivery of highway maintenance and management services, principally:
 - 1.1.1 The delivery of the £148.05m of capital investment works beings delivered by 2023 in highway infrastructure; and
 - 1.1.2 Restructuring the Council's Highway Maintenance and Management PFI contract to procure a long-term replacement subcontractor with a view to securing a continuation of the Council's £50.311m per annum PFI grant through to 2035.
- 1.2 The report further deals with two other, related matters:
 - 1.2.1 The proposed change of scope to transfer the Specified Licences service to the Council; and
 - 1.2.2 To formalise entering into a Memorandum of Understanding with the West Midlands Combined Authority (WMCA) for using their contract to enable the more efficient delivery of specific carriageway condition works for the A34 and A45 in combination with the WMCA's SPRINT scheme.

2 Recommendations

That Cabinet:

- 2.1 Notes:
 - 2.1.1 The submission to Department for Transport (DfT) of an updated Outline Business Case (UOBC) contained in Appendix A (Exempt Information); and
 - 2.1.2 The updated position in this report regarding progress with delivering capital investment works and procurement of the long-term replacement subcontract.
- 2.2 In respect of the Specified Licence service:
 - 2.2.1 Approves that the service is to be entirely delivered by the Council, as described in paragraphs 3.14 to 3.17;
 - 2.2.2 Accepts the implications for the transfer of staff under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2014, as set out in paragraph 7.5; and
 - 2.2.3 Authorises the City Solicitor (or their delegate) to negotiate and complete all necessary documentation to give effect to the above recommendation.
- 2.3 In respect of the A34 / A45 Carriageway works, notes:
 - 2.3.1 The Council entering into a Memorandum of Understanding with the West Midlands Combined Authority, formalised in accordance with the Council's Procurement and Governance Rules paragraph 4.59 vii for

negotiation without competition of the carriageway works on the A34 / A45 as part of SPRINT, that was undertaken during the period May 2022 to July 2022, as described in paragraphs 3.18 to 3.19, 4.2 and 7.4.2 to 7.4.6 of this report; and

- 2.3.2 That a breach of Part D2 of the Procurement and Contract Governance Rules in Part D of the Constitution will be recorded.

3 Background

- 3.1 In June 2019 the Council agreed a commercial settlement of disputes relating to its Highway Maintenance and Management PFI contract. Since then, the Council has continued to receive its PFI grant from government, subject to Department for Transport (DfT) approving a revised business case. This approval is necessary for the Council to continue to receive its PFI grant.
- 3.2 The revised project business case will restructure the PFI contract to enable the Council's contractor (Birmingham Highways Ltd – BHL) to procure a long-term replacement subcontractor. This is anticipated to be completed in Autumn 2023.
- 3.3 Working with BHL, an interim subcontractor (Kier Highways Ltd) was appointed on 1 April 2020. This contract currently runs to 31 August 2023 and delivers operational services to keep the highway safe and available and some investment works. Additional investment works are delivered by Tarmac.
- 3.4 As requested by DfT, since March 2021 the Council has submitted four business cases to DfT, the latest of which (the UOBC) was submitted on 30 September 2022.

Progress with investment

- 3.5 The Council has prioritised investment in rehabilitating highway infrastructure following the 2019 settlement and has approved significant investment. This process requires sustained investment over many years to achieve improvements in condition across the network. Nonetheless, a positive start has been made.
- 3.6 Table 1 below shows that over £148m of investment has been approved to be made by the time the long-term replacement PFI contract commences in 2023. This investment is in addition to the cost of operational services to inspect highway infrastructure and carry out routine and reactive maintenance and repairs.

Table 1: Approved / Planned Programmed Maintenance investment, 2019-23

Asset group	2019-20	2020-21	2021-22	2022-23
Approved by Cabinet	June 2019		June 2021	Dec 2021
Carriageway and Footway	£50m		£40m	£40m
Street Lighting	£2.8m		£4.5m	£3m
Traffic Signals				£5.5m
Tunnels				£2.25m
Total	£52.8m		£44.5m	£50.75m

3.7 Table 2 below shows progress towards delivering the largest part of the investment – the £130m investment in Carriageway and Footway. Programmes are developed from an initial list of schemes based on surface condition. This is then validated with video survey data and site visits. The final programme is then prioritised from analysis of survey information, condition maps, complaints, recommendations from Local Engineers and highway stewards and other Council priorities.

Table 2: Surfacing Programmed Maintenance delivered (to 30 September 2022)

Asset group	Schemes	Planned Works (£m)	Value completed on site ¹ (£m)	Quantity (m²)
Carriageway	357	£65.407	£48.640	1,302,421
Footway	243	£47.030	£39.272	408,211
Surfacing Design		£11.113	£9.534	n/a
Total	600	£123.550	£97.446	1,710,632
Notes:				
¹ The Council is invoiced upon certification of completion of works. In an ongoing programme the amount paid to date will therefore always be less than the volume of work completed on site.				

3.8 Table 3 below shows the continued investment in street lighting. This includes a major programme of replacement on the A38 Aston Expressway and Five Ways Underpass in 2021-22. Street lighting investment prioritises replacement of columns in poor condition alongside opportunities to reduce energy consumption / carbon footprint and luminaire only upgrades.

3.9 The 2022-23 programme has been designed and will commence replacements of 849 columns in November 2022.

Table 3: Street lighting Programmed Maintenance investment, 2020-23

Street lighting	2020-21	2021-22	2022-23
Programme value	£2.8m	£2.3m	£5.2m
Columns replaced	1,931	1,089	0 ²
Notes: ² Replacements for 2022-23 have been in the design stage, including re-alignment of the programme for the works on Aston Expressway to 2022-23. Replacement installations are expected to commence in November 2022, with the programme of 849 replacements expected to be completed by August 2023.			

3.10 In December 2021 Cabinet approved investment between 2021 and 2023 of up to £5.5m for traffic signal controllers. In approving this it was acknowledged that there was further work to be undertaken on the programme, which at that time was assessed at 40 potential sites. The sites and the extent of works required have been reviewed. The programme is in the process of being finalised and may present some options for savings against the expenditure previously approved by Cabinet. The approved programme will be delivered by August 2023 and will be within the £5.5m expenditure approved by Cabinet.

3.11 Works to replace essential safety equipment in the city centre tunnels are taking place in 2022-23. Design of the necessary works has been undertaken and a subcontractor engaged, with materials ordered. Works are expected to be completed by July 2023.

Progress with long-term replacement subcontractor procurement

3.12 Procurement of the long-term replacement subcontractor is a matter for BHL. However, the Council is closely involved in this process because the procurement relies upon and may affect the restructuring of the Council's contract with BHL. This is to ensure that BHL is procuring a subcontract to deliver the services that the Council requires.

3.13 The contract notice inviting prospective bidders to express their interest in participating in the procurement process and submit a response to a selection questionnaire was issued in February 2022. Two pre-qualified bidders have been invited to participate in dialogue and dialogue has since commenced with each of these bidders. The next stages in the process are:

3.13.1 Dialogue will continue until March 2023.

3.13.2 Final Bids are expected to be submitted in April 2023.

3.13.3 Final Bids will be evaluated and the Full Business Case (FBC) will then be developed. It will require approval by Cabinet.

3.13.4 The FBC will be submitted to DfT in June 2023.

- 3.13.5 The long-term replacement subcontract will be awarded in August 2023 and (subject to approval by DfT) is expected to commence in November 2023.

Changes to project scope

- 3.14 The procurement of the replacement subcontractor provides an opportunity for the Council to consider changes to its contract with BHL that it would like to make in addition to those that are necessary for its restructuring.
- 3.15 Specified Licences are licences issued by the Council as Highway Authority, allowing works on the public highway to be carried out by non-statutory undertakers. They include erecting scaffolding, hoarding, carting over heavy equipment and are issued in accordance with the Highways Act (1980) and New Roads and Street Works Act (1991).
- 3.16 Currently, the technical aspects of Specified Licensing process are contracted to BHL and sub-contracted to Kier. This arrangement has faced many complexities including a difficult and time-consuming process for applicants. The number of interfaces has led to frustration and customer dissatisfaction.
- 3.17 To address this, it is proposed to bring all functions of the Specified Licensing process entirely within the Council. This will ensure the applicant receives their licence in a timely manner, without having to deal with multiple teams. A project to develop this proposal is underway and is expected to be implemented by May 2023.

A34 / A45 Carriageway works

- 3.18 In February 2021, resurfacing work was planned along sections totalling 9.2km of the B4100, A34 Birchfield Road and A45. These works were part of highway measures being implemented by TfWM to support the development of the wider SPRINT Bus Route Programme.
- 3.19 In May 2022, as part of the surfacing Programmed Maintenance described in paragraph 3.7 above, three sections of the A34 in Perry Barr and Lozells and one section of the A45 in Sheldon within the scope of the SPRINT works were identified as a priority due to their condition. These works were required to be carried out at short notice to take the opportunity to combine the works with SPRINT and to improve condition prior to the Commonwealth Games.

4 Options considered and Recommended Proposal

- 4.1 There are no alternative options to be considered in respect of progress with infrastructure investment or the long-term replacement subcontractor procurement.
- 4.2 **A34 / A45 Carriageway works.** Combining carriageway condition works with SPRINT meant that the works would have needed to be delivered as a separate

scheme. Delivering the works as part of SPRINT works realised the following benefits:

- 4.2.1 Reduced costs by avoiding duplication of mobilisation, design work, traffic management and road closures;
- 4.2.2 Reduced disruption and avoiding reputational damage of multiple closures, by only closing the road once; and
- 4.2.3 Critically, ensuring that the improvements were delivered on the Games Route Network ahead of the Commonwealth Games.

4.3 Had the carriageway condition works and SPRINT works not been combined, these benefits would not have been realised.

4.4 **Bringing the Specified Licence process within the Council.** The alternative to this is to leave this service as part of the PFI contract and delivered externally. This will not however address the issues of dealing with multiple teams and is considered less likely to deliver improvements for customers.

5 Consultation

5.1 A revised governance structure has been implemented, which strengthens internal consultation and engagement on the delivery of the PFI contract restructuring.

5.2 A steering group regarding the way forward with the project has been in place since 2019. Senior officers from the Council have continued to work with DfT, advisors to project lenders, Birmingham Highways Holdings Limited's administrator and the chairman of BHL as part of this group.

5.3 External legal advice, including expert financial and commercial advice, has been obtained from DLA Piper (assisted by Arup).

5.4 DfT, as the Council's sponsoring Government department for the project, has been consulted directly throughout discussions and have supported the development of the business case.

6 Risk Management

6.1 An analysis of risks is contained in Exempt Information.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The Council has adopted the Corporate Plan 2022 to 2026 on 11 October 2022. This identifies five strategic outcomes for the city, as follows:

- i. A Bold Prosperous Birmingham;
- ii. A Bold Inclusive Birmingham;

- iii. A Bold Safe Birmingham;
 - iv. A Bold Healthy Birmingham; and
 - v. A Bold Green Birmingham.
- 7.1.2 This decision directly affects the priorities that relate to the strategic outcomes as follows:
- i. **A Bold Prosperous Birmingham, Priority 3: Attract inward investment in infrastructure:** This decision directly affects investment in and maintenance of the Council's 2,500km highway network and Council-owned infrastructure on it. Such investment will directly reduce the percentage of carriageways that should be considered for structural maintenance.
 - ii. **A Bold Safe Birmingham, Priority 9: Make the city safer:** The future investment in street lighting that this decision supports contributes to people feeling safer.
 - iii. **A Bold Green Birmingham, Priority 19: Continue on the Route to Zero:** Investment in street lighting technologies and future investment in street lighting enables the city to manage and reduce its highway infrastructure energy use.
- 7.1.3 Citizens' priorities also reflect that road and pavement repairs are the fourth highest priority in the city for citizens.

7.2 Legal Implications

- 7.2.1 The Council has a statutory duty to maintain highway infrastructure, primarily under the Highways Act 1980 and the New Roads and Street Works Act 1991. The issue of Specified Licences is also covered by these acts.
- 7.2.2 Under Section 111 of the Local Government Act 1972 the Council has power to do anything that is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 7.2.3 The information contained within Appendix A (Exempt Information) is considered exempt under Schedule 12A of the Local Government Act 1972, as it relates to the financial / business affairs of parties to the Highway Maintenance and Management PFI contract, including the Council.
- 7.2.4 Disclosure of the information within Appendix A would adversely affect the Council's ability to negotiate the best value outcome in relation to the contract by disclosing its strategy to those with whom it is negotiating. It is therefore not in the public interest to make this information available publicly.

7.3 Financial Implications

- 7.3.1 The Council has an annual revenue budget for highways maintenance of £53.582m in 2022-23, which is currently supplemented by Government PFI grant of £50.310m. Continued provision of this grant is subject to Government determination of the full business case, of which the updated OBC is at their request.
- 7.3.2 The Council has, as part of the original PFI business case proposal, ring-fenced its highways revenue budget and has a revenue reserve of £160.659m following investment outlined in paragraphs 3.7 to 3.10, which remains ring-fenced to support future investment and PFI restructuring proposals.
- 7.3.3 The implications of losing the PFI grant would be reverting to an annual process of bidding for capital grants, potentially through the West Midlands Combined Authority and in competition with other neighbouring authorities. Either way, it would be anticipated that there would be a reduction in funding that would significantly impact on the level of investment in the Council's network.
- 7.3.4 To ensure value for money was obtained, the proposed additional cost for the surfacing works was compared to the anticipated cost to the Council of the works that the Council proposed to carry out. The actual cost was slightly lower than it would have cost the Council to perform the same works, but delivered the additional benefits described in paragraph 4.1. It therefore represented better value for money.

Specified Licences

- 7.3.5 Under the original Highway Maintenance and Management PFI contract fees relating to Specified Licences were allocated between the Council and BHL, with the Council paying for the services through its single Unitary Charge payment.
- 7.3.6 In moving to the interim arrangements post-settlement, the complexity of this was reduced so that the Council receives all income from fees relating to licences and then pays for the services to prepare and issue licences.
- 7.3.7 In theory, were this change being implemented in isolation there would be a reduction in the Unitary Charge to reflect the cost of providing the Specified Licence service and the risk associated with delivery. In practice, this will be realised through the revised future Unitary Charge no longer including the staffing costs associated with this service. There is a net neutral effect to the Council's costs at this stage.
- 7.3.8 Fee income varies from year to year according to the level of activity on the network requiring such licences. Fee income for Specified Licences in 2020-21 was £0.998m. In 2021-22, it was £1.298m.

- 7.3.9 It is anticipated that the cost of three staff transferred under TUPE from Kier Highways Ltd (including overheads) will be covered by the income generated and will be cost neutral to the Council in 2023/24. Specified Licence fees will be approved through the annual Council Business Plan report.

7.4 Procurement Implications

- 7.4.1 There are no procurement implications related to the progress of the long-term replacement subcontractor procurement.

A34 / A45 Carriageway works

- 7.4.2 Cabinet was advised of the SPRINT works to be carried out on the B4100, A34 and A45 in the Planned Procurement Activities Report dated 20 April 2021. The conclusion of the single contractor negotiation was not finalised due to an opportunity to combine these works with further improvement works as part of the investment in carriageway approved by Cabinet on 14 December 2021.
- 7.4.3 The following procurement options were considered:
- i. ***To carry out the works to improve condition separately as part of the investment programme.*** This option was rejected because it would have missed the opportunity to combine the works with those of SPRINT and would have meant a separate set of works and closures.
 - ii. ***To tender for a Council only contract.*** This option was rejected on the basis that the WMCA's contract for SPRINT is suitable and no additional benefit would be realised from carrying out a tender process for the Council's requirements for works adjacent to each other.
 - iii. ***To use the Negotiated Procedure.*** WMCA has a contract in place that covered the required works. Entering into a Memorandum of Understanding with WMCA to deliver the works by their contractor under the terms of their contract is the recommended option.
- 7.4.4 The works have been satisfactorily delivered by the WMCA's contractor in July 2022. Under the terms of the Memorandum of Understanding, payment is due to the WMCA who will in turn pay their contractor. The WMCA contract was procured in accordance with the Public Contracts Regulations 2015 and the contract notice confirms that it is available to other public sector organisations.
- 7.4.5 This report seeks, for transparency, retrospective approval to conclude the process for the works to be delivered by WMCA that improved the

condition of the carriageway, noting the breach of the Procurement and Contract Governance Rules.

- 7.4.6 As described in the alternative options in paragraph 4.1 above, the additional works would otherwise have been delivered as part of the Council's surfacing Programmed Maintenance. This would not have achieved the benefits in paragraphs 4.2.1 to 4.2.3.

7.5 Human Resources Implications

- 7.5.1 There are presently three staff employed by Kier delivering the aspects of the Specified Licensing service. Upon implementation of the change in scope these staff will transfer to the Council under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations. Transferring staff will transfer on their current pay, terms and conditions.
- 7.5.2 The receipt of fees for the issue of Specified Licences (see paragraph 7.3.8 above) supports the Council's staff costs and operation of the process.

7.6 Public Sector Equality Duty

- 7.6.1 An Equality Impact Assessment (EQUA995) has been undertaken and is shown in Appendix B.

8 Appendices

- 8.1 Appendix A: Exempt Information
- 8.2 Appendix B: Equality Impact Assessment
- 8.3 Appendix C: Environment and Sustainability Assessment

9 Background Documents

- 9.1 Report of the Managing Director, City Operations to Cabinet, 14 December 2021 ("Highway Maintenance and Management PFI Contract").

APPENDIX A EXEMPT INFORMATION

APPENDIX B EQUALITY IMPACT ASSESSMENT

APPENDIX C ENVIRONMENT AND SUSTAINABILITY ASSESSMENT

Project Title:	Highway Maintenance and Management PFI Contract	
Directorate: City Operations	Service: Highways and Infrastructure	Person Responsible for assessment: Domenic de Bechi
Date of assessment: 5 August 2022		Is it a new or existing proposal?: Existing
Brief description of the proposal: To formally update Cabinet on the progress of the procurement of the long-term replacement subcontractor for the Highway Maintenance and Management PFI contract.		

Potential impacts of the decision on:	Positive Impact	Negative Impact	No Specific Impact	What will the impact be? If the impact is negative, how can it be mitigated, what action will be taken?
Natural Resources - Impact on natural resources including water, soil, air			x	<p>This decision will not have a direct impact on the use of natural resources beyond those already committed to by the Council in carrying out its statutory obligations to maintain its existing highway infrastructure.</p> <p>Investment will require the use of natural resources to maintain highway infrastructure. The impact of this use is mitigated by using reused or recycled materials where appropriate (see below under Sustainable Products).</p>
Energy use and CO ₂ emissions			x	<p>This decision itself will not have a direct impact on the use of energy and CO₂ emissions.</p> <p>Consequential investment in street lighting and other powered apparatus will result in more energy-efficient equipment being used, thereby reducing energy use and CO₂ emissions.</p>
Quality of environment	x			<p>This decision itself will not have a direct impact on the quality of the environment.</p> <p>Investment in surfacing of Carriageway and Footway will result in renewal and repair of surfaces, which will improve the quality of the environment.</p>

Potential impacts of the decision on:	Positive Impact	Negative Impact	No Specific Impact	What will the impact be? If the impact is negative, how can it be mitigated, what action will be taken?
Impact on local green and open spaces and biodiversity			x	<p>This decision will not directly affect green / open spaces or biodiversity. Management of the council's 76,000 highway trees is part of the services within the contract, ensuring that these trees are maintained and healthy.</p> <p>Maintenance of effective highway drainage contributes to management of water and flood risk.</p>
Use of sustainable products and equipment	x			<p>This decision itself will not have a direct impact on the use of sustainable products and equipment.</p> <p>Where surfacing works are undertaken, materials are reused wherever possible, typically either relaying existing materials (such as paving) if not damaged or using recycled materials (such as materials made from recycling previous surfacing materials).</p> <p>For street lighting or powered apparatus works see Energy Use above.</p>
Minimising waste	x			<p>This decision itself will not have a direct impact on minimising waste.</p> <p>Where materials can be re-used (as described under Sustainable Products above) this minimises waste.</p>

Potential impacts of the decision on:	Positive Impact	Negative Impact	No Specific Impact	What will the impact be? If the impact is negative, how can it be mitigated, what action will be taken?
Council plan priority: a city that takes a leading role in tackling climate change	x			Use of sustainable materials and improved energy efficiency are key outcomes within the delivery of the statutory duties that this decision enables. This is part of the Council taking a leading role in tackling climate change.
Overall conclusion on the environmental and sustainability impacts of the proposal	<p>The investment that results from this decision is necessary to meet the Council's statutory duties to maintain the Highway. The above mitigations reduce the impact of this where appropriate and most investment in powered apparatus will additionally improve energy efficiency as part of the benefits.</p> <p>The Interim Services subcontractor Kier Highways has set out its targets and approach to sustainability in its brochure Driving for a Sustainable Future, which are aligned with the Council's objectives.</p>			