

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	CORPORATE DIRECTOR, ECONOMY
Date of Decision:	18th SEPTEMBER 2018
SUBJECT:	EXTENSION TO THE EXISTING HIGHWAYS AND INFRASTRUCTURE WORKS FRAMEWORK (CONTRACT REF: P0178)
Key Decision:	No
If not in the Forward Plan: (please "X" box)	Relevant Forward Plan Ref: n/a
Relevant Cabinet Member(s) or Relevant Executive Member:	Chief Executive approved <input type="checkbox"/>
Relevant O&S Chair:	O&S Chair approved <input type="checkbox"/>
Wards affected:	Councillor Brett O-Reilly – Cabinet Member for Finance and Resources
	Councillor Sir Albert Bore – Resources Overview
	ALL

1. Purpose of report:

- 1.1 This public report provides details of the extension to the existing Highways and Infrastructure Works Framework Agreement for a further 18 months from 1st October 2018. The accompanying report on the private agenda contains commercially confidential information that cannot be disclosed on the public agenda.

2. Decision(s) recommended:

That Cabinet:-

- 2.1 Notes the information contained within the public report.

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3. Consultation

3.1 Internal

- 3.1.1 Consultation has been carried out with the Cabinet Member for Transport and Environment who is supportive of the proposals.
- 3.1.2 The Assistant Director, Transport and Connectivity and the Assistant Director, Highways and Infrastructure have been consulted and are in agreement with the contents.
- 3.1.3 Officers from City Finance, Procurement, and Legal and Governance have been involved in the preparation of this report.

3.2 External

- 3.2.1 The existing framework contractors have been consulted about the proposal to extend the framework agreement by 18 months.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1.1 The framework extension supports the Birmingham City Council Plan: 2018 – 2022, especially the outcome that 'Birmingham is an entrepreneurial city to learn, work and invest in' by ensuring that investment in transport and infrastructure within the city can be delivered in the most efficient way.
- 4.1.2 All the companies on the framework have signed up to the principles on the Birmingham Business Charter for Social Responsibility (BBC4SR) and have an agreed action plan which forms part of the conditions of contract. The action plan activities are updated to reflect the value of business achieved by each company throughout the contract period. This will continue through the extension period.

4.2 Financial Implications

- 4.2.1 The extension to the framework agreement does not commit the Council to any particular level of spend. The estimated cost of the works is up to £100 million total. This has been estimated from the provisional programme of works for the Commonwealth Games and the Transportation and Highways Capital programme and will be funded from service directorate budgets applicable to each project. The exact costs of each project will be confirmed at Contract Award stage.
- 4.2.2 The extension to the framework agreement will be used to complete highways and infrastructure works included within the approved capital programme and other budgets. There are no specific revenue implications arising from the extension of the framework agreement. The revenue implications in relation to the individual projects or programmes will be identified in future Project Definition Document and Full Business Case reports.

4.3 Legal Implications

- 4.3.1 The Council, in carrying out transportation, highways and infrastructure related work, will do so under the Highways Act 1980, Road Traffic Act 1991, Road Traffic Regulation Act 1984, Local Government Act 2010, Traffic Management Act 2004, Transport Act 2008,

and other related regulations, instructions, directives and general guidance.

4.4 Public Sector Equality Duty

4.4.1 The requirements of Standing Order 9 in respect of the Council's Equality Policy and the Equality Act 2010 have been specifically included in the contract documentation.

4.4.2 Details of the Equalities Assessment were included in the Category Strategy approved by Cabinet on 29th July 2013 and the same continues to apply.

5. Relevant background/chronology of key events:

5.1 A joint report to the Cabinet Member for Commissioning, Contracting and Improvement and the Deputy Chief Executive dated 21st August 2014 approved the award of framework agreements for the provision of highways and infrastructure works for a period of 4 years that commenced on 1st October 2014 to:

Lot 1 (Works value up to £50,000)	Lot 2 (Works between £50,001 to £200,000)
Amey LG Ltd	Alun Griffiths (Contractors) Ltd
Fitzgerald Contractors Ltd	Amey LG Ltd
J Dodd & Son (Contractors) Ltd	Fitzgerald Contractors Ltd
Kelbec Civils Ltd	Lafarge Tarmac Trading Ltd
Parade Civil Engineering Ltd	McPhillips (Wellington) Ltd
R W Services Contractors Ltd	Parade Civil Engineering Ltd
Lot 3 (Works between £200,001 to £500,000)	Lot 4 (Works over £500,000)
Alun Griffiths (Contractors) Ltd	Alun Griffiths (Contractors) Ltd (Reserve)
Amey LG Ltd	Amey LG Ltd
Fitzgerald Contractors Ltd	Balfour Beatty Civil Engineering Ltd
Forkers Ltd (Reserve)	Dawnus Construction Ltd
Lafarge Tarmac Trading Ltd	Fitzgerald Contractors Ltd (Reserve)
McPhillips (Wellington) Ltd	Jackson Civil Engineering Group Ltd
North Midland Construction Plc	McPhillips (Wellington) Ltd
Parade Civil Engineering Ltd (Reserve)	VolkerFitzpatrick Ltd

5.2 The term of the Framework Agreement was 4 years ending on 30th September 2018 for all Lots with work packages called off under the framework being subject to direct award or mini-competition for Lot 1 and mini-competition for Lots 2 to 4.

5.3 The framework contractors have performed satisfactorily and in line with the Framework Terms & Conditions. The Framework Agreement has been used to successfully deliver the Transportation and Highways Capital programme since October 2014 with schemes ranging from small local ward measures through to high profile major cycling and junction improvements. In addition, the Framework Agreement has been used by Walsall MBC, Coventry City Council, and the University of Wolverhampton.

5.4 The OJEU notice stated a limit of £200 million cumulative contract awards over the contract period and to date around £60 million of contracts have been awarded through this framework, including all contracts issued by partner authorities.

- 5.5 An options appraisal was commenced in September 2017 by Infrastructure Delivery to establish the strategy for future highways and infrastructure delivery. Around the same time, a proposal was raised by the West Midlands Combined Authority (WMCA) to set up a regional framework agreement. This proposal delayed the completion of the Council's options appraisal with the consequence that there is now a requirement to extend the Highways and Infrastructure Works Framework Agreement for a period of 18 months.
- 5.6 Since the options appraisal was commenced the situation has been further complicated by the Council's successful bid for the Commonwealth Games 2022. There is now the need for a significant increase in both direct and indirect highway and infrastructure works with the possibility of up to £100 million of projects to be commissioned over the next 18 months.
- 5.7 In view of the above it is recommended that the Highways and Infrastructure Works Framework Agreement is extended for a period of 18 months from 1st October 2018. This will allow the procurement activities for the highways and infrastructure works in the wider Perry Barr area to be completed under the Framework Agreement. If these works are not completed then there will be an impact on the successful delivery of the Commonwealth Games 2022. The extension will also allow for the completion of the options appraisal for future delivery of highways and infrastructure as referred to in paragraph 5.5 above. A shorter period of extension was considered and discounted on the basis that the options appraisal and delivery of the new procurement strategy could not be completed within a shorter timescale.
- 5.8 Individual packages of work will continue to be tendered on the same terms and conditions and in accordance with the protocol of the Framework Agreement; Lot 1 – direct award or mini-competition, Lots 2 to 4 – mini-competition. The contract awards through the Framework Agreement will be reported and approved by the designated decision maker in line with the City Council's Standing Orders and Procurement Governance Arrangements.
- 5.9 The Framework Agreements will continue to be managed by the Head of Infrastructure Delivery.
- 5.10 It is anticipated that the procurement strategy for replacement framework agreement(s) will be presented to Cabinet in early 2019 with new contract(s) commencing on 1st April 2020.

6. Evaluation of alternative option(s):

- 6.1 Using an alternative public bodies Framework Agreement – this option has been discounted because although there are other framework agreements in place, they are not suitable in the short term due to issues around locality, numbers and type of contractor, and aligning Council policies into the framework conditions.
- 6.2 Commence the process for a new Framework Agreement – this option has been discounted as there is no time to undertake and complete such an exercise in time to deliver the projects required.
- 6.3 Procure bespoke contracts – this option has been discounted as compliant contractual arrangements are required to be in place in line with the terms of the capital schemes. A full procurement exercise would have to be carried out for each scheme and this would not be prudent use of Council funds with the additional time and resources required to

award the contract.

7. Reasons for Decision(s):

- 7.1 To enable the framework agreement to be extended for a further 18 months from 1st October 2018 to 31st March 2020 to support timely delivery of projects at a key time in the delivery of the Commonwealth Games 2022 and the Transportation and Highways Capital programme whilst completing the options appraisal for a replacement framework agreement.

Signatures

Date

Councillor Brett O'Reilly
Cabinet Member for Finance and Resources

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Waheed Nazir
Corporate Director, Economy

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List of Background Documents used to compile this Report:

1. Report to Cabinet dated 29th July 2013 – Category Strategy for a Highways and Infrastructure Works Framework Agreement
2. Report to Cabinet Member for Commissioning, Contracting and Improvement jointly with the Deputy Chief Executive dated 21st August 2014 – Contract Award for a Highways and Infrastructure Works Framework Agreement

List of Appendices accompanying this Report (if any):

None

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in section 4.4 of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

- 1 The Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality 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.
- 2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) tackle prejudice, and
 - (b) promote understanding.
- 5 The relevant protected characteristics are:
 - (a) marriage & civil partnership
 - (b) age
 - (c) disability
 - (d) gender reassignment
 - (e) pregnancy and maternity
 - (f) race
 - (g) religion or belief
 - (h) sex
 - (i) sexual orientation