



Open Report on behalf of Andy Gutherson, Executive Director - Place

Report to:	Executive
Date:	07 November 2023
Subject:	Highway Works, Professional Services and Traffic Signals Contract Extension
Decision Reference:	I029251
Key decision?	Yes

Summary:

This report sets out the proposed extension options to the three main highways delivery contracts Highways Works, Professional Services and Traffic Signals which deliver the majority of works undertaken by the Highway Service for Lincolnshire County Council.

The report invites the Executive to approve the proposed extensions recommended within this report and commence re-procurement for one of the three main contracts.

Recommendation(s):

That The Executive:

1. Notes the progress made and the outcome of the contract refresh procedure;
2. Approves the proposed extension of the Highways Works contract with Balfour Beatty, to increase the contract duration to the 31 March 2032 by offering an additional 6 year term on the revised terms outlined within this report.
3. Approves the proposed extension of the Professional Services contract with WSP, to increase the contract duration to the 31 March 2028 by offering an additional 2 year term.
4. Delegates to the Executive Director – Place in consultation with the Executive Councillor for Highways Transport and IT authority to take all decisions and enter into all documentation necessary to give effect to the extensions referred to in paragraphs 2 and 3 above.

5. Approves the re-procurement of the Traffic Signals Contract to commence on 1 April 2026.
6. Delegates to the Executive Director – Place in consultation with the Executive Councillor for Highways Transport and IT all decisions necessary to progress the procurement of the replacement arrangements referred to in paragraph 5 above, to include choice of procurement procedure, scope of the services and the terms of all necessary legal documentation and to approve the final form and the entering into of all contracts and other legal documentation necessary to give effect to the replacement contract.

Alternatives Considered:

1. Do not to approve the outcome of the contract refresh procedure and either:-
 - commence re-procurement of all three contracts (Highway Works, Professional Services and Traffic Signals) with or without an options appraisal that fundamentally adjusts the current delivery model for the Highway Service; or
 - extend all three contracts including the Traffic Signals contract.
2. To approve extensions on different terms than those proposed.

Reasons for Recommendation:

The proposed decision to make different offers to the various parties comes about through an evaluation of the benefits and risks to the operation of the services. Improved delivery seen through the Highway Works contract has become a platform from which to continue to improve the service through ease of ongoing service delivery whilst building mechanisms to continually reduce cost and improve efficiency. The recommendation in the context of a large delivery contract means that the advantages of long-term planning together with operational innovation and development can be fully realised by the Council.

Whilst operational performance within the Traffic Signals Contract has been good, the Council have not seen the expected benefits outlined within the original bid come to fruition within this contract and therefore, after careful consideration, the decision to not extend this contract is recommended.

For the Professional Services contract, service delivery is not as closely tied to long term investment and therefore a more limited contract offer is appropriate.

The recommendations made within this report will enable the Council to deliver an affordable service through a delivery model that will provide the most efficient and effective mechanism for delivering the Highway Service in Lincolnshire.

1 Background

1.1 On 1st April 2020 Lincolnshire County Council commenced delivery of the highway service using three new contract arrangements. This followed a two-year procurement exercise designed to test the market and ensure best value for the Council. The contracts commenced in 2020 and still in place are:

- Highway Works Term Maintenance Contract – Provider: Balfour Beatty.
- Professional Services Contract – Provider: WSP.
- Traffic Signals Term Maintenance Contract – Provider: Colas.

1.2 The contracts were awarded on an initial six year term with the potential to extend for a maximum of a further six years. The extensions can be awarded individually or in blocks and are linked to performance levels and service reviews within each of the individual contracts. The overall durations were designed to match capital investment which would be required from the suppliers for plant and fleet as well as giving a longer period for investment in staff through apprenticeships and training programmes.

1.3 The contracts make use of the latest versions of the New Engineering Contract (NEC) which are the UK industry standard and are being increasingly used globally. Each of the contracts are linked using a contractual clause which requires all parties to work together and include performance indicators which affect both the individual contracts as well as the whole group. The two Term Service contracts for Highway Works and Traffic Signals make use of a payment mechanism where a 'target' is generated from a list of tendered works items, which is adjusted each year for inflation. The contractor is paid the cost of carrying out the work to meet the specified standard and this cost is compared to the target. The difference between the two is known as pain or gain depending on whether the cost is more or less than the target. In a gain situation the contractor and Council share the benefit of carrying out the work efficiently to ensure the costs are below the target. In a pain situation, the costs are shared but only up to a certain threshold above which the contractor pays the additional costs. The Professional Services contract takes a slightly different approach by making use of a range of payment mechanisms depending on the services required and includes this pain/gain arrangement in addition to more traditional forms of payment.

1.4 During the original procurement process the following objectives were set out in the contractual documentation for the Highway Service and were directly linked to the combined Key Performance Indicators and individual contract Performance Indicators. The Objectives of the service were and still remain as:

- Help Lincolnshire businesses to be the drivers of economic growth through supporting a climate in which they are able to invest, enhance their business performance and offer attractive jobs to a skilled workforce.
- Protect, enhance and balance our environmental needs through the delivery of the service.

- Develop growth and prosperity through encouraging investment and enhancing the economic potential of Lincolnshire.
- Improve the quality of service to the end users and improve the perception of all works completed on behalf of the Client. Keep members of the public informed proactively and reduce the volume of enquiries received into the alliance.
- Contribute to and improve the health and wellbeing of the population as a whole who use, work or live within Lincolnshire.
- Minimise the disruption to the wider public by taking reasonable measures to maintain network availability. Look to work collaboratively with other Partners, contractors, utility companies and consultants wherever possible.
- Assist the Client to deliver services to suit political priorities and deal with changes should and when they arise.
- Develop a successful culture within the alliance Partners to foster positive, creative, innovative and sustainable working relationships.
- Throughout the life of the service, ensure that the level of enthusiasm and attention to detail is maintained. Ensure that the terms of the contract are delivered in full with any additional quality offers made as part of the original procurement process.
- Strive to continually improve the alliance and the service it delivers, by challenging established working practices with new methods, ideas and products.
- The Client will actively encourage the use of future technologies within the Contract, in an effort to improve efficiencies and give added value to the work carried out. The Contractor / Consultant is to be proactive in promoting such technologies and demonstrating the efficiencies that can be made.

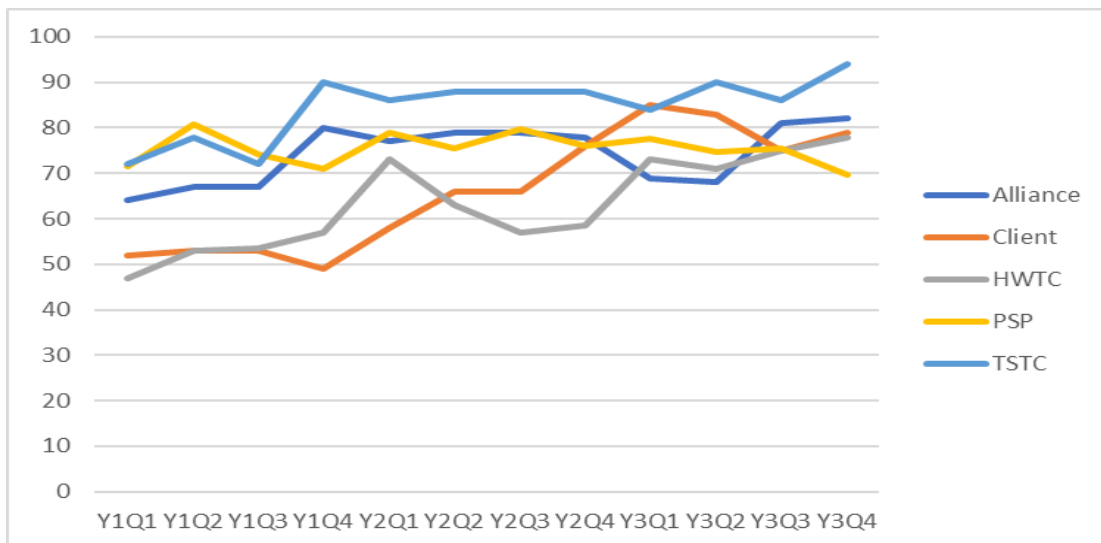
1.5 A specific “Contract Refresh” clause was included in the contract scope at the time of tender, to enable a full review of the service and performance of the contracts. This clearly set out the process and extent of the review before any extensions can be considered. The timescales are designed to ensure that the Council always has enough time to commence a procurement exercise should the contracts not be performing as required or failing to offer good value.

1.6 The process for considering extensions began in Spring 2022, following the defined timescales, with a full review of the service areas and the performance of the contracts for all parties. An action plan was created identifying tasks for all partners focussed on the key areas for improvement within each contract. Some key challenges exist which are specific to each contract. At that time, it was agreed that no extensions would be offered, and a further review would be carried out in 2023 to test improvement against the action plan. Contract reviews then took place during Spring 2023 using the agreed action plans and considering any further issues which have emerged over the period.

1.7 The extension clauses within the contract require the agreement of both parties to any proposed extension. The refresh procedure referred to above allows a full review of the contracts with each party able to explore those elements of the contract that do and don’t work for them and for changes to be made to reflect the results of the review.

2 Contract Performance levels

2.1 Contract performance has generally been strong. The management system has been developed significantly since the last suite of contracts but has retained the principles of ensuring fairness and transparency whilst rewarding good behaviours and outcomes. The introduction of a contract clause to allow damages to be paid to the Client should performance outcomes not meet required levels and the enhanced mechanism to add further financial incentive whether the contracts are in pain or gain situations has led to a much greater focus from suppliers on achieving their performance targets. The increased performance requirements set out at the start of the contract have challenged the suppliers and are directly influenced by the operational performance in each contract. The scale of the services delivered clearly differs between the parties, but there has been a steady increase in the performance metrics since the start of the contracts in 2020 (See table below).



3 Contract Refresh

Highways Works Term Contract

3.1 This is the main contract that delivers the majority of the operational delivery for the Highway Service. Balfour Beatty are the highway work term contractor and took over the service from the previous incumbent Kier on 1st April 2020. A number of changes to delivery structure were introduced into this contract together with a stronger performance management regime. A key feature of the revised delivery centres around the reactive service which is used to carry out all the time sensitive repairs as defined within the Highways Infrastructure Asset Management Plan.

3.2 Due to the scale and variety of service delivered via the contract, the contract refresh procedure has taken longer in comparison to the Traffic Signals and Professional Services Contract.

The main areas of focus were:

- 3.3 Reactive Service** – As part of the contract awarded in 2020, LCC shifted from a Time Charge model to an incentivised target-based cost system that links the commercial model to the operational outputs. Balfour Beatty are responsible for the design, planning and completion of these works and the payment mechanism is based around a price per defect model to incentivise their efficiency. This is a consistently challenging area of any term maintenance contract but the revised mechanism has seen a significant improvement in service delivery both in terms of quality and speed. Even with these improvements, from the 1st April 2021, Low Service Damages have been applied against Performance Indicator three – Tasks completed within timescales - Reactive Works, as the delivery hasn't met the targeted bid position. Based on this performance concern a full-scale review of this service area has been completed over the past 12 months which has resulted in a number of improvements and efficiencies that have either been implemented or are due to be implemented over the next 6 months.
- 3.4 Street Lighting** – The recruitment of operatives needed to deliver the Street Lighting service within Lincolnshire has been extremely challenging over the past three years. The ability to attract candidates and maintain an affordable service has resulted in the Highway Works provider needing at times to introduce external sub-contractors at a higher cost to ensure basic levels of service delivery are maintained. This has also been coupled with a high turnover of Street Lighting managers on the contract leading to a prolonged period of instability. Like the reactive service, a number of initiatives have been developed over the past 12 months that aim to address the underlying factors causing operational delivery issues.
- 3.5** In addition to the operational delivery concerns, the contract refresh process reviewed the potential extension contract timescales. One of the major determinants of this is influenced by the greater opportunities that a longer extension gives in relation to fleet. A typical investment cycle for a Heavy Goods Vehicle is typically six years and was the reason for the initial and maximum extension period. Based on the Contract Refresh discussion it was concluded that a longer extension at a mid-way point would enable this efficiency to be fully realised. Issuing smaller extensions in blocks of one or two years would remove this opportunity and may result in progressive lack of investment.
- 3.6** As part of the contract refresh process the Highway Service has reviewed and benchmarked performance with contracts in alternative authorities. The methods, standards and level of innovation does not support changing a provider at this moment in time. In addition to these checks, the volume of Highway Term Maintenance Contracts coming up for renewal in 2026 is likely to result in a reduction in Value for Money as the market is likely to be saturated with local authorities carrying out similar procurements of this type.
- 3.7** Since the contract commenced on the 1st April 2020, the Performance measures have progressively improved from scores of 50% to now consistently averaging above 70%. In line with this improvement, the asset condition and general perception of the Service, during challenging market conditions, has also improved. Ensuring a prolonged phase of continued improvement is extremely important to

the Highway Service and one of the best ways to do this would be to offer an extension to the existing contract.

- 3.8** A major challenge to this approach is that the commercial sustainability of the contract has been in question since commencing on the 1st April 2020. The true picture was unclear in the first two years of the contract due to the impact of the Covid Pandemic. As working patterns and supply chain stability continued to improve, the commercial position of the contract has remained challenging.
- 3.9** During Years 1, 2 and 3 of the contract the open book “actual” cost to deliver the service is running approximately 8 – 10 % higher than the total of the prices tendered as part of the original bid. During this phase, the contract has been in significant pain.
- 3.10** In addition to this, LCC have also benchmarked service delivery costs with other contracts that have recently come to market. Benchmarking within the Reactive service, emergency response, street lighting and footway Price List items are significantly lower.
- 3.11** These pressures are known to be impacting on the wider Balfour Beatty business and as a result Balfour Beatty would not be prepared to extend the contract without this issue being addressed. Given the strong arguments in favour of an extension discussions have taken place over the terms on which an extension could take place which would be acceptable to both parties. These discussions have identified four areas where variations to the contract will be necessary.

Efficiency Initiatives – LCC and Joint

- 3.12** This involves creating a number of initiatives (some joint and some LCC) that will remove constraints on service delivery. Implementing these initiatives will help the financial stability of the contract by improving the efficiency of the service. The key areas are:
- Safety Inspections – Reactive resource programme capacity aligned with A road safety inspection response times.
 - Safety Inspections – Ad hoc safety inspections will be carried out in advance of A road resurfacing schemes on a rolling programme in line with Client’s works delivered outside the contract. The Contractor will utilise the available road space between closure points so that reactive faults near and at intervention level is completed efficiently.
 - Improvements to the interface and restrictions imposed for road space booking required to deliver the reactive service.
 - Continue to seek and implement innovative solutions for material, Traffic Management and process change for the reactive service.
 - Revert the Option X17 of the service level table in the Contract Data Part 1 to the original contract drafting for Performance Measure PI 3.

- Innovation – Footway. Implement a programme of Cold Recycled Bound Material, QVE (quick visco-elastic) to substitute traditional material at appropriate sites on all footway schemes.

3.13 The total value of these initiatives are £779,250 per annum.

Efficiency Initiatives – Balfour Beatty

3.14 The financial position can further be improved by Balfour Beatty improving productivity of work delivery. The reactive service is one area where improvements have been identified and Balfour Beatty have committed to making a number of improvements in this area. Some of the key improvements are:

- 45 hour working
- Mobile Hotbox
- Material Waste
- Plant and Fleet review - Short Term
- Contractor Identified Faults
- Plant and Fleet review - Medium/Long Term

3.15 The total value of these initiatives are £526,000 per annum

Price List adjustment

3.16 Consideration has been given to lifting the tendered Prices for certain elements of the work where the bid position is fundamentally apart from the actual and benchmarked position of delivering the service. This relates to the Reactive Service, Footways and Street Lighting. A number of adjustments will be agreed which are proportionate and clearly justified by benchmarking. All adjustments would still result in the rates being below the benchmarked rates. The total value of the adjustments once the efficiency initiatives are taken into account is £1,785,987 per annum. The adjustments to the Price List will be based on the historical volume of work delivered on contract to date.

Improvements in Scope

3.17 To ensure that the contract continues to develop, LCC have made a number of enhancements to the Scope of works. These improvements will not only help improve service delivery but will offset the lift in prices above so that the economic balance of the original contract isn't disturbed. A list of the key Scope improvements are outlined below:

- Installation and running of an Operational Control Hub with three additional members of staff for the duration of the contract.
- The Contractor commits to improving the average defect units per day per gang for work delivered within the reactive service. In accordance with Scope Clause 717, the Contractor will instigate an Improvement Plan if the rolling

six-month average defect units per day per gang is lower than the same period from the previous year.

- When an appropriate opportunity arises, the Contractor commits to standardising the Terms & Conditions of the operatives to reduce the variability of contract types across the directly employed workforce.
- The Contractor will provide 20 days of software Support per annum to develop the Client's Highways Asset Management System for the duration of the contract.
- The Contractor will implement the LIP criteria mapping tool to target areas for social value intervention to ensure activities are focused and relevant for the residents of Lincolnshire.
- The Contractor will Integrate the compatible data capture of BIM360 on appropriate capital schemes, generally those with a value greater than £100,000 or those where improvement will be gained, with the Client's Highway Asset Management System.

3.18 These changes have been captured in a draft Deed of Variation which would be signed at the same time as the extension to record the agreed changes to the contract.

3.19 Following the conclusion of the contract refresh process, it is recommended that the Highways Works contract provider (Balfour Beatty Living Places) is offered a six-year extension from 31st March 2026 to the maximum permitted extension (as advertised in the original procurement documentation), taking service delivery to the 31st March 2032 on the revised terms generally described above.

3.20 The above changes give rise to a budget pressure of £1,785,987 per annum, assuming that all initiatives are implemented. The overall Highway service budget can accommodate this change however it will result in less work being delivered and in time will impact both the level of service delivery and the condition of the major Highway assets unless it is met with additional budget. This additional budget requirement will not be needed until 1st April 2024. A figure of £1,785,987 will be added to the Medium Term Financial Plan 24/25.

3.21 During the original procurement exercise the financial standing of Balfour Beatty was tested. The exercise has been repeated against up to date filed accounts and the tests have been passed. The result is that the Council's finance officers were satisfied that on the basis of their latest published, audited accounts, Balfour Beatty have sufficient financial standing for the Council to be content to extend the contract with them on the terms outlined within this report.

Professional Services Contract

3.22 The professional services contract enables the Highway Service to top up with skills and resources to the existing labour pool that is required to deliver the Highway Service.

3.23 The professional services contract was awarded to WSP who were also the previous supplier of the contracted services. Their bid built on their previous experience working with Lincolnshire particularly within the Technical Services Partnership (TSP) model where Lincolnshire County Council staff and consultants staff form an integrated team using appropriate skills and resources to complete works with an ability to issue further packages of work for schemes or specialisms beyond the scope, technical ability and resource level of the Lincolnshire based TSP.

The Contract Refresh process has focused on the following areas:

3.24 Recruitment – The ease and ability for the Professional Service Provider to fill Lincolnshire based engineers has been a challenge within the contract within years one, two and three. The challenge within the contract has been around recruitment and retention of staff in a very difficult labour market. Large national projects such as HS2 together with a declining workforce have been exacerbated by the ability of staff to work from home meaning that the market for consultants has become a national one rather than competing on a regional level as before. This has led to a significant change in the market since the pandemic which has now become the standard operating model in this area of the industry.

The constraints of a competitive bid process, engineering qualifications and a national skillset shortage has meant that the certain positions have remained vacant, often resulting in the work being completed within a national or international design office.

3.25 Locally based staff – As a result of the recruitment challenges there has been a notable drop in the overall number of Professional Service Contract staff based locally within Lincolnshire. This trend, also replicated for the LCC staff within Technical Services Partnership means that the ability to train and mentor junior staff has started to be impacted. To tackle this issue a number of initiatives have commenced and will form a key focus for the extension period.

3.26 As part of the contract refresh process the Highway Service has reviewed and benchmarked performance with contracts in alternative authorities. The contract, measures and the way the service is set up is viewed as industry leading. The Highway Service needs a top up option for positions that are not 100% utilised and therefore this model remains the desired procurement option.

3.27 Unlike the Highway Works Term Service Contract, there are very limited investment opportunities that present an argument for a long-term extension. The main driver for extending the contract is to provide surety for the Professional Service Provider to advertise positions and attract on a long term basis. However, based on exit interview feedback the main cause for staff leaving is the pay in comparison to other positions advertised nationally.

3.28 In addition to the lack of investment opportunities, LCC and WSP are managing a challenging discussion in relation to performance issues encountered in the previous iteration of the contract. These discussions have the potential to impact on the relationship between the parties and therefore on the performance of the contract

through an extended term. However, to date, the relationship has remained positive and has been unaffected by this discussion and it is considered that this will remain the case.

- 3.29** The overall cost to deliver the Professional Services contract reduced from the previous iteration and has recently been benchmarked against similar framework contracts that are available for LCC to utilise. The analysis of this benchmarking phase concluded that the contract rates continue to offer good value. The rates within the WSP contract also correlate with the LCC Engineer role salaries for officers of the council carrying out similar roles and responsibilities.
- 3.30** Following the conclusion of the contract refresh process, it is recommended that the Professional Services Contract provider (WSP) is offered a two-year extension from 31st March 2026, taking service delivery to the 31st March 2028. This would leave four years available of the maximum permitted extension.
- 3.31** During the original procurement exercise the financial standing of WSP was tested. The exercise has been repeated against up to date filed accounts and the tests have been passed. The result is that the Council's finance officers were satisfied that on the basis of their latest published, audited accounts, WSP have sufficient financial standing for the Council to be content to extend the contract with them on the terms outlined within this report.
- 3.32** The proposal is to offer an extension on the existing contractual terms. Offering an extension on this basis will not result in any LCC budget pressure.

Traffic Signals Term Contract

- 3.33** The Traffic Signals contract was designed to be a standalone model as market testing carried out in 2017 concluded that the majority of Tier 1 providers carrying out Highway Service delivery would subcontract this service area.
- 3.34** The Traffic signals term contract was awarded to Colas in 2020 after having been operated by Peek Traffic (now Swarco) for a number of years. This was a new expansion into this particular market for Colas who have a substantial presence in other sectors of the industry but a very limited number of traffic signal only contracts.

The Contract Refresh process has focused on the following areas:

- 3.35 Resilience** - The market is very limited with only a small number of suppliers for both products/materials and engineers. Colas had intended to use their Lincolnshire contract to establish themselves within the market and develop their service in this sector. To date, this development has not materialised and the Contract Refresh process highlighted concerns in relation to resilience. Over the initial phase of the contract there has been a substantial change in the Key People delivering this contract. The ability of the wider Colas business to supplement or backfill positions is limited and remains a risk for the authority.

- 3.36 Equipment** - The key challenges in this contract area have been based around the supply of materials and equipment together with some resourcing issues. Colas had intended to manufacture a number of key items of equipment themselves but have not been able to justify the investment required to facilitate this production. Being a smaller supplier in the market has left them with difficulties ensuring supply is consistent and offers best value. Recruitment has also been a significant challenge in our geographically isolated market and limited local resource pool.
- 3.37 Wider business** - An attractive element of the original bid that hasn't come to fruition in Lincolnshire were the wider benefits that could be realised from the Colas business. Due to the scale and complexity of the business, the Traffic Signals contract at times has operated in isolation.
- 3.38** Whilst there are a number of concerns highlighted through the contract refresh process the operational performance in years one, two and three of the contracts has been very good with consistent scores in the 90% region. The ability to cope with the concerns raised in relation to resilience, equipment and the wider business is a testament to the operatives and management locally delivering the service. However, the concerns are significant and remain and the re-procurement of the contract would give an opportunity to address them.
- 3.39** Following the conclusion of the contract refresh process, it is recommended that the Traffic Signals Provider (Colas) is not extended, and a new re-procurement process is commenced.
- 3.40** The recommendation to re-procure the Traffic Signals contract is likely to incur a budget pressure for the Highway Service. The average cost to mobilise Traffic Signal bids received in 2019 was in the region of £50,000. The additional one off cost will cover the costs incurred setting up a new depot, stocking and carrying out activity to set up the contract in advance of the starting date. In addition to this, commercial and Highway Staff time, updating and developing the procurement documentation will need to be factored in. The Highway Service proposes that this is managed within the existing staffing arrangements.

4 Offer

- 4.1** Under the terms of the original contract, the extension offer is issued by LCC but it is for the Contractors and Consultants to accept the extension. The acceptance of the offer is not mandatory.
- 4.2** To protect the best interests of the Council, the Highway Service remains ready to instigate a new procurement if any extension offer is declined. The offer and acceptance timescale will be limited so that that adequate timescales remain to re-procure in advance of 1st April 2026 should the service need to do so.

5 Affordability

- 5.1** The recommendations as a result of the Contract Refresh process will ensure that the Highway Works and Professional Service contracts will continue to offer good

value to the Council. Extending the contracts will also ensure that service improvement initiatives continue whilst avoiding the need to re-mobilise the contract delivery. It will also ensure that improvements and initiatives already underway continue to progress at pace.

- 5.2 The providers' price proposals continue to be analysed against the historical cost of delivering the Highway Service, benchmarked with other authorities and compared with the open book cost to deliver the service. .
- 5.3 The recommendation of not extending the Traffic Signals Contract is likely to mean that the longer term objectives and goals of the service suffer and the service is likely to incur a remobilisation cost in the region of £50,000 if another provider is successful. The service has taken this into account when coming to its recommended position outlined in 3.39.

6 Sustainability

- 6.1 Sustainability issues have been considered for the proposals detailed in this paper to understand the potential outcomes from any changes made to service delivery. In general terms, there is little impact from the proposals with a number of areas which are likely to see benefits. The increased opportunity from the longer extension to the Highway Works contract allows investment decisions to be made more effectively and are likely to see some different technologies being used across the fleet. The commitment to social value and the opportunities to improve the offering from the service by better targeting of hard to reach groups, improved relationships and longer term approach to recruitment are all likely to lead to an improved position. The service will continue to monitor and ensure the suppliers meet their sustainability targets across the contracts through the continued use of performance metrics and close management focus.

7 Legal Issues:

Procurement

As the proposal in relation to Professional Services is to extend the contract on the existing terms and the extension is provided for in the contract no procurement issues arise.

No procurement issues arise in relation to the proposals for the Traffic Signals contract as the proposal is to re-procure and the re-procurement will be conducted in accordance with legal requirements

In relation to the Highways Works contract, under the Public Contracts Regulations 2015 variations to a contract can give rise to a requirement to follow the procurement procedures unless the variation falls into one of a number of exceptions.

In particular a modification of a contract will not require a further procurement where all of the following conditions are met

- the modification does not render the contract materially different in character from the one initially concluded;
- the modification does not introduce conditions which, had they been part of the initial procurement procedure, would have—
 - (i) allowed for the admission of other candidates than those initially selected,
 - (ii) allowed for the acceptance of a tender other than that originally accepted, or
 - (iii) attracted additional participants in the procurement procedure;
- the modification does not change the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- the modification does not extend the scope of the contract or framework agreement considerably;
- a new contractor does not replace the one to which the contracting authority had initially awarded the contract.

The contract refresh procedure Clause S719 of the Highways 2020 Contract Scope includes the provision for the Parties to look back and carry out a root and branch review of the services and identify the areas in which the contract has not worked well. Once the issues are identified the contract provision allows the parties to implement any necessary contract changes, set new targets and agree where any investments should be made to develop the services and implement mutually agreed improvement in the areas where the contract has not worked well.

In this case (i) the contract is not materially different, (ii) the changes are such as were envisaged by the refresh procedure which was in the original contract, (iii) given the efficiency initiatives that the contractor is required to implement or contribute to and the improvements in the Scope that they must comply with the economic balance of the contract is not changed in favour of the contractor, (iv) the scope of the contract is not extended considerably and in particular the value of the net effect of the efficiency initiatives and the Price List adjustments is only 4.3% of the value of the contract; and (v) the identity of the contractor is not changing.

In the circumstances, the extension of the Highway Works contract on revised terms is considered to be in accordance with the Council's procurement obligations.

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- 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.
- 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.

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.

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 tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process.

An Equality Impact Analysis (EIA) has been carried out on the recommendations contained within this report. The EIA forms part of this report and can be found in Appendix D.

Positive Impacts:

- The contracts that assist in the delivery of the Highway Service have a proven track record of implementing social value improvements within the communities of Lincolnshire. Extending two of the contracts and re-procuring the Traffic Signals contract on a similar basis will ensure Apprentice schemes, work experience and work trials under the provider contracts continue.

- The recommendations of this report enable Council officers to instruct and design work that results in change to the physical environment. Projects that will be implemented over the remaining life of the contracts will have positive impacts on persons with physical disabilities. There is a range of advice, guidance and codes of practice drawn up to direct engineers and local authority officers on the best way to meet the needs of disabled people and these will continue to be adhered to.
- In addition to the providers approach to service delivery, the contract scope dictates that the providers must adhere to the Lincolnshire County Council equality and diversity policy.

Negative Impacts:

- No perceived adverse impacts

Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

The JSNA and JHWS requirements have been considered. The recommended options will ensure Lincolnshire has delivery mechanisms in place to implement a well maintained and safe road network. Delivering a successful Highway Service will enable people to access the services they need, reduce the number of people killed or seriously injured and support the development of a local vibrant economy, all of which can impact on the health and wellbeing of individuals and communities.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The duties under section 17 of the Crime and Disorder Act 1988 have been considered and it is deemed that the proposed changes to the proposed extensions to the service delivery contracts will have no direct impacts.

8. Conclusion

Over the past twelve months, the Highway Service has carried out a detailed review of external delivery contracts working collaboratively with its partners to ensure that the service can obtain the best delivery model. The Contract Refresh process has identified a great number of successes but also identified weaknesses that need to be addressed. The

weaknesses will form an ambitious programme of improvements that will commence within the next phase of service delivery following the outcome of this decision.

The recommendation of the report is to offer an extension within the Highway Works and Professional Services Contract and commence a re-procurement of the Traffic Signals Contract.

9. Legal Comments:

The Council has the power to give effect to the recommendations which are in accordance with the Council's procurement obligations for the reasons set out in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

10. Resource Comments:

The costs incurred from approving the recommendations contained in this report will largely be met from the Council's approved revenue and capital budgets.

The report highlights the ability for these contracts to be flexible to adapt to future budget changes. Any remaining cost pressures, after consideration of service efficiency initiatives, will be addressed through the Council's normal financial planning processes. The approved budgets also include a contingency which can be utilised for any additional cost pressures that arise between planning cycles.

Accepting the recommendation to extend the contracts will ensure the Council continues to receive good value for these services.

11. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Highways and Transport Scrutiny Committee at its meeting on 30 October 2023 and the comments of the Committee will be reported to the Executive.

d) Risks and Impact Analysis

See the body of the Report

12. Appendices

These are listed below and attached at the back of the report	
Appendix A	Equality Impact Analysis

13. Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Highways 2020 Contract Award Decision – Decision Reference IO17884	Report Reference: (moderngov.co.uk)

This report was written by Jonathan Evans, who can be contacted by email at Jonathan.Evans@lincolnshire.gov.uk