

Open Report on behalf of Andy Gutherson – Executive Director of Place

Report to:	Councillor R G Davies, Executive Councillor for Highways, Transport and I.T.
Date:	16 to 20 September 2022
Subject:	Winter Maintenance Contract Award
Decision Reference:	I027902
Key decision?	Yes

Summary:

This report presents the options available for the ongoing maintenance of the gritter fleet required to fulfil winter maintenance duties on the highway. The Executive Councillor for Highways, Transport and I.T is asked to approve the award of a contract to Transport Connect Ltd.

Recommendation(s):

That the Executive Councillor:

1. Approves the direct award of a contract for the delivery gritter fleet maintenance to Transport Connect Ltd for a period 6 years with the potential to extend to a maximum 10-year term.
2. Delegates to the Executive Director - Place authority to approve the final form and the entering into of all contract and other legal documentation necessary to give effect to the above decision.

Alternatives Considered:

1.	Do not approve the recommended option and tender the contract via a procurement exercise.
2.	Do not approve the recommendation and request that the current supplier continues their contractual obligations.

Reasons for Recommendation:

Lincolnshire County Council (LCC) operates a fleet of 47 Gritters, based at the 8 highway depots across the county to salt 3018km of the LCC road network. LCC have historically leased gritters on a long-term hire arrangement but following a shift to procure our own fleet in 2019 the existing provider who leased and maintained the gritter fleet is actively reducing their operations within Lincolnshire.

In early 2022, the existing provider actively sought the help of LCC to move the maintenance of the gritter fleet to another provider. As a business, they have decided to close their remaining workshop in Lincoln, leaving a gap in maintenance coverage.

The contract will enable LCC to deliver an affordable service through a delivery model that will provide the most efficient and effective mechanism for gritter fleet maintenance. Based on the improved level of service received from Transport Connect Ltd (TCL) and soft market testing the recommendation is to enter into a long-term maintenance contract without an open market procurement exercise with TCL for six years with the option for a further four-year extension.

1. Background

The Council has a statutory duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice under section 41(1A) of the Highways Act 1980. The Council does this through the use of its gritter fleet. Maintenance of the fleet throughout the winter season and across their 10–12-year lifespan is key to ensuring we can fulfil our statutory duties and to get value for money out of our fleet through improved longevity.

Lincolnshire County Council (LCC) operates a fleet of 47 Gritters, based at the 8 highway depots across the county to salt 3018km of the county's roads.

Until 2019, the 47 Gritters were all on a long-term lease that included maintenance with the existing provider. In 2019 the decision was made by the Council to procure our own fleet due to the significant commercial benefits of separating the lease from the maintenance. The new Gritters will come into service on a phased approach, in line with the existing leases ending.

2019 – 5 owned

2021 – 13 owned

2022 – 26 owned

2023 – 40 owned

2025 – 44 owned

2026 – Full 47 vehicle fleet

Since the first deliveries of the Councils owned vehicles into service, the existing provider has indicated a desire to reduce all their maintenance operations within the County, which

includes our owned gritter fleet. The maintenance of the gritter fleet is vitally important, as this service keeps the vehicles operational and road legal throughout the winter season, as well as overhauling them each summer. Due to the challenging nature of the service, material used (treated salt) and weather conditions operated in, the wear and tear on the fleet is significant, with repairs, damage and breakdowns having to be undertaken. It is vital that repairs, if and when required are completed in a timely manner so that vehicles are operational and are out keeping the roads clear of snow and ice.

Maintenance of the gritter fleet is a highly specialised skillset with a very limited number of operators with an existing presence in Lincolnshire who have the skills and experience to complete. Soft market testing indicates that three or four providers with an existing presence in Lincolnshire have this capacity, one being the existing provider and another TransportConnect Ltd (TCL).

To cover an immediate gap in the south of the County during 2021, as a result of the existing provider closing two of their southern workshops, TCL was awarded a short-term, two-year contract for 34 vehicles until October 2023 to ensure continued service delivery.

The interim arrangement with TCL has been a successful shift in service delivery, with reduced vehicle downtime and improved operational running costs of the service by approximately 10%. This saving was achieved over the 2021/22 winter season across the 34 vehicles that they maintained.

2. Options

Direct Award to TransportConnect Ltd

The main benefits of this recommendation will be a reduction in the cost of the service, through the lower cost of maintenance and improved vehicle availability. Securing a long-term contract with TCL will ensure a soft market tested labour rate being fixed with annual indexation so that the entire fleet is maintained under one contract.

As TCL is an LCC wholly owned company LCC will have greater influence over the contractor's maintenance regime and have greater input into overhauls over a long-term agreement. This will bring the stability needed to improve maintenance performance. The existing TCL contracts have introduced a reduction in the use of spare gritters or double running of machines to cover breakdowns. This is anticipated to continue to improve over the term of the contract as a strong focus on preventive maintenance will only serve to increase the longevity of the fleet.

Direct Award to TransportConnect Ltd – Financial Implications

The recommended six-year contract with the option to extend a further two blocks of two years will allow TCL to invest their own annual revenue into an additional northern based workshop. This in time will further enhance the maintenance offering to the Council.

TransportConnect have agreed to a fixed annual budget and with a competitive indexed labour rate (except for parts) which will help alleviate LCC budget pressures.

Any profits from the contract will be capped to a maximum annual amount, with any unspent budget being returned to LCC Highways.

Tender the contract to the open market

As the existing provider continues to withdraw from Lincolnshire, there is a need to have a contract in place prior to the 2022 winter service commencing. With challenging timescales and a small market with suitable skills and an existing base in the county to undertake the service it is highly likely that an open tender will lead to increased prices to LCC.

The tender process would not allow sufficient time for a supplier to mobilise new premises in the County and to recruit suitably experienced engineers. Taking this approach would increase the likelihood of gritters being unavailable and ultimately negatively impact the delivery of the winter service.

Tender the contract to the open market – Financial Implications

A benchmarking exercise was completed in 2021 using existing rates provided by a number of maintenance suppliers either known to or operating within LCC. When compared to TCL, these rates ranged between 42% and 104% higher than the TCL offer. Whilst this was not a formal tendering exercise, there is a small probability that the rates of any suitable supplier would be comparable to or lower than that of TCL.

The current supplier continues their contractual obligations

The existing provider have a contract with the LCC to maintain 13 northern based vehicles on a reducing number until 2026. They can be forced to continue to provide a maintenance provision for these vehicles in accordance with the contract. Should this option be chosen the existing provider is expected to fulfil this obligation from their Leicester workshop or they would exercise their right to allocate the maintenance to a third party.

The existing provider has indicated that in the event of LCC insisting on them fulfilling their contractual obligations, they would look to subcontract the maintenance to TCL.

The current supplier continues their contractual obligations – financial implications

Completing the maintenance of the vehicles from the Leicester workshop would significantly increase vehicle downtime, particularly in the event of a breakdown in the winter, as vehicles would need to be recovered back to their workshop outside of the County. This is likely to result in double running of vehicles, incurring additional costs.

If the existing provider were to subcontract to TCL, this would increase the costs compared to a direct award as additional administration time would be incurred in the

additional administration and approval of repairs. It is likely that vehicle downtime would also increase as a result of these delays.

4. Legal Issues:

Procurement

Under Regulation 12 (1) of the Public Contracts Regulations 2015 a contract falls outside of the requirements of the Regulations where it is awarded to an entity that meets the following conditions:-

- (a) the Council exercises over the entity concerned a control which is similar to that which it exercises over its own departments;
- (b) more than 80% of the activities of the entity are carried out in the performance of tasks entrusted to it by the Council; and
- (c) there is no direct private capital participation in the entity

TCL is wholly owned by LCC and has been established on a basis that it specifically meets the requirements of Regulation 12(1). A direct award of the contract to TCL without competition is therefore lawful.

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.

The Equality Act has been taken into account. The discussion and options progressed as a result of this paper are not anticipated (positively or negatively) to impact people with a protected characteristic when compared with people who do not share that characteristic.

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 discussion and options progressed as a result of this paper are not anticipated (positively or negatively) to impact the JSNA and JHWS.

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 options and discussion within this paper will have no direct impact.

5. Conclusion

Proactive maintenance is essential to maximise the lifespan of the existing 47 vehicle fleet. Ensuring that the fleet is fully operational minimises the overall winter service risks in terms of deliverability and ultimately safety to the residents of LCC.

The maintenance of the gritter fleet is a specialised skillset with limited providers carrying out this service with an existing presence in Lincolnshire. The decision by LCC to procure its own fleet has removed some of the incentives for external providers to enter the market as LCC shifts the service requirements over to a maintenance only contract. The existing provider is actively looking to leave Lincolnshire and soft market testing has concluded that an open market tender exercise will not deliver additional value.

Based on the improved level of service received from Transport Connect Ltd (TCL) and soft market testing the recommendation is to enter into a long-term maintenance contract without an open market procurement exercise with TCL for six years with the option for a further four-year extension.

The direct award to TCL will be implemented prior to the winter season. TCL have sufficient engineering resource within their business to maintain the gritter fleet for the 2022/23 season and plan to recruit additional engineers as demand dictates within the local community. TCL have also identified a northern based workshop that is currently available to rent and can fully mobilised prior to the winter season commencing.

The Executive Councillor is requested to consider whether to approve the recommendation as set out in within this report.

6. Legal Comments:

The Council has the power to enter into the contract proposed. The direct award of a contract is lawful under Regulation 12 of the Public Contracts Regulations 2015.

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

7. Resource Comments:

The recommendation within the report to direct award the maintenance of the winter gritter fleet reflects good value for money. The costs will be met from existing approved budgets for the service and will help to alleviate cost pressures within this budget.

8. 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 on 12 September 2022 and the comments of the Committee will be reported to the Executive Councillor.

d) Risks and Impact Analysis

Discussed within this paper.

9. Background Papers

No background papers as defined in the section 100D of the Local Government Act 1972 were relied upon in the writing of this report.

This report was written by Jonathan Evans, Head of Highways Client and Contractual Management Services, who can be contacted by email at Jonathan.evans@lincolnshire.gov.uk.