

# Executive Report



Delegated Decisions – 14 November 2023

## HIGHWAYS TERM SERVICE CONTRACT - SHORT TERM EXTENSION

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Exempt / confidential / not for publication	<b>No</b>
Council Plan reference	<b>Not in Council Plan</b>
Wards affected	<b>All wards</b>

### Executive summary

The current Highways, Street Lighting and Network Infrastructure Contract (CU2276A) was awarded to Ringway Infrastructure Services Ltd and commenced in 2014.

The contract was awarded for an initial period of 7 years with the option to extend for up to 3 further years. The contract has been extended until April 2024 based on a number of performance criteria metrics.

As this contract is due to expire, MKCC is currently in the process of undertaking an extensive re-procurement process to engage the market and appoint a new provider to commence from the completion of the existing contract to ensure continuation of service delivery and compliance with all statutory requirements.

However, following the first round of tender submissions and feedback from all of the potential bidders it has become clear that the current procurement timeline may not allow MKCC to deal appropriately with contingencies that may arise during the procurement process and may not enable suitable time for mobilisation, particularly for 'green fleet' and associated plant, therefore a revised timeline needs to be applied, requiring the original end date of the existing contract to be extended to ensure continuity of statutory service requirements and continuation of agreed existing works programmes.

To enable the contract to be extended for a short period of up to 5 months, a number of checks have been undertaken, such as, is an extension in line with the permitted grounds for modification under Regulation 72 of the Public Contracts Regulations 2015 , and has the contractor continued to meet all of the performance criteria set out in the contract that demonstrate the value for money and quality that MKCC require.

This report sets out the reasoning and data gathered to support an extension period and requests formal approval to undertake all processes to enable that extension to be put in place to ensure that MKCC continue to meet all its statutory requirements whilst completing the procurement of a new long-term provider.

## 1. Decision/s to be made.

- 1.1 That the current Highways, Street Lighting and Network Infrastructure Contract (CU2276A) with Ringway Infrastructure Services Ltd be extended by a further period of up to 5 months from 1 April 2024.
- 1.2 That authority be delegated to the Director of Environment & Property, to determine the exact operational end date of the existing contract within the permitted extension period including the ability to authorise further extensions subject to the maximum extension period stated at 1.1. above.

## 2. Why is the decision needed?

- 2.1 The current Highways, Street lighting and Network Infrastructure Contract (CU2276A) delivers all highway related operations for Milton Keynes City Council, this service is currently provided by Ringway Infrastructure Services Ltd (RIS) up to 31 March 2024.
- 2.2 The services are currently subject to a new procurement exercise that will culminate in a new contract. The new contract commencement date was due to be 1 April 2024, due to the protracted governance and process associated with this complex procurement it has been necessary to extend the timeline past this date in order to complete the procurement and appoint a contractor that will provide the best value solution for the authority, as well as enable more time for mobilisation where possible.
- 2.3 Milton Keynes City Council is the 'Highways Authority' and as such has a number of statutory duties to discharge and needs a contractor to undertake the operational element of these.

2.4 The original Highways, Street Lighting and Network Infrastructure contract included Key Performance Indicators to assess whether the authority is receiving a good service. The performance of the contractor was built into contract payments to encourage efficiencies to drive value for money this would mean that without performance across all KPI's the contractor would be penalised financially, therefore providing an incentive to perform. The contractor has achieved the contractual performance standards over the prior years to agreed targets, leading to three successful extensions. This gives confidence to the service that up to a further 5 months extension would continue to provide benefit to the authority with no added risk.

### 3. Implications of the decision

Financial	Yes	Human rights, equalities, diversity	
Legal	Yes	Policies or Council Plan	Yes
Communication	Yes	Procurement	Yes
Energy Efficiency	Yes	Workforce	Yes

#### a) Financial implications

The Highways, Street Lighting and Network Infrastructure contract supports the objectives within the Council Plan. It also supports the existing Transport Policy and Strategies and will be fundamental in delivery of the physical aims of the new mobility strategy.

This contract is linked to the Highways Asset Management policy, strategy and plan through the delivery of the highways investment programme, including the current final phase of the street lighting LED conversion programme. By extending the contract up to a further 5 months we will continue to deliver on financial investments and allow longer term planning to take place which will allow for future financial benefits to be realised.

It is expected that the current spending profile, of approximately £1.5M per month will be maintained throughout the extension period which is funded via the ongoing use of both existing revenue and capital allocations, representing an estimated 4% additional expenditure on this contract against the original estimation of c.£200M when the contract was awarded in 2014.

#### b) Legal implications

The Council, under its function as Highways Authority, has a statutory duty under Section 41 of the Highways Act 1980, to maintain adopted highways in a safe and serviceable condition for all users. It also has a duty under the railways and Transport Act 2003 to keep the highway clear of snow and ice.

The contract was procured in a manner that complied with the procurement law existing at the time and included extension options that have been utilised. The contract can be extended for a further period of up to five months as requested if it complies with one or more grounds provided for in Regulation 72 of the Public Contracts Regulation 2015 (as amended). The Council is currently in the process of conducting a procurement exercise for the replacement of the services under the contract and the request is for a short- term extension to ensure that there are no gaps in the provision of statutory services.

Legal service has considered the proposed extension of contract and is of the view that the extension is permissible under Regulation 72(1)(b) for the additional services to be provided by the current contractor during the extension period. Regulation 72(1)(b) allows a modification of contract to be made where a change of contractor cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, or services or installations, under the initial procurement; and where such a change would cause significant inconvenience or substantial duplication of costs for the contracting authority.

As the Council is already undertaking a procurement exercise for a replacement contract, another procurement exercise for a short- term contract to bridge a gap between the current contract and the start of the new contract would not be viable both from an economic and technical perspective. Given the significance of these services which are mainly statutory services, and which inevitably include the use of IT systems, a period of mobilisation is also required which would not be achievable under a short-term contract of 5 months. A change of contractor for the proposed extension period is therefore not practical from an economical and technical perspective and would cause significant inconvenience to the Council with regard to its service provision, as well as lead to duplicity of costs considering that there is an ongoing procurement exercise that would lead to the start of a new contract shortly afterwards.

Any increase in price resulting from a modification of contract under Regulation 72 (1)(b) must not exceed 50% of the original value of the contract. The value of the original contract was £200 million. A monthly contract spend of £1.5m during the extension period does not therefore exceed the permitted threshold. The Council will be required to publish a notice of the modification in accordance with Regulation 72(3).

A contract extension, if approved will allow the Council to discharge its statutory duties.

c) Procurement implications

The current procurement process was commenced in May 2023 and is being delivered under the competitive procedure with negotiation. The procurement is currently in the negotiation stage. This has enabled MKCC to fully understand the overall procurement timetable based on current progress, as well as, understanding the bidder's initial feedback about likely procurement timeframe development and deliverability of mobilisation within the initial allotted timeframe, hence the request for extension of the current contract.

d) Other implications

This extension would enable the authority to mobilise the new contract in tandem with the current established highway service to continue to provide a full service until the new contract is ready to start and reduce a number of risks associated with our statutory duties during this period.

The contract continues to support carbon reduction and energy management primarily through the final phase of the LED lighting conversion programme that is being finalised by April 2024.

## 4. Alternatives

- 4.1 Do not approve the extension – this would require the Council to re-procure an alternative highway service (within 5 months) which is unrealistic and would cost the authority financially, due to duplicated set up costs, mobilisation costs and mostly due to short term hire plant/materials at excessive high costs. Additionally, there would be an inability in the short term to merge and function systems to monitor and instruct works or respond to customer interactions properly.
- 4.2 In terms of the time for the existing directly MKCC staff who are currently working on the procurement of a new highways service contract, which could be affected by this and lead to a risk of even further delays to that contract procurement. In the meantime, the Council will not have a service provider and therefore be unable to discharge its statutory duties as outlined in section 3. b) legal implications. This is a very high-risk option and **not recommended**.

## 5. Timetable for implementation

- 5.1 Decision required by the 14 November 2023. Implemented on 1 April 2024.

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### List of Annexes

Annex Ringway Performance Pack 2022/23

### List of Background Papers

None