

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	11 <sup>th</sup> November 2014
<b>Report of:</b>	Lorraine Butcher, Executive Director of Strategic Commissioning
<b>Subject/Title:</b>	Highway Services Contract - Extension to the Service Period (Ref CE 14/15-24)
<b>Portfolio Holder:</b>	Cllr David Topping, Service Commissioning

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### 1.0 Report Summary

- 1.1 This report seeks Cabinet approval to extend the Highway Service Contract following the achievement of the contractual Key Strategic Indicator (KSI) targets in 2012/13 and 2013/14.
- 1.2 The Highway Service, over the first 3 years of the Contract, has delivered significant improvement across the highway network, in particular through the Councils commitment to the Highway Investment Programme. Achievements to date have delivered measurable improvements for the residents and businesses of Cheshire East.
- 1.3 The Highway Services Contract was awarded to Ringway Jacobs on 6 October 2011 for an initial service period of 5 years, with the option for up to a 2 year extension depending on contract performance.

### 2.0 Recommendations

- 2.1 It is the recommendation that Cabinet, acting in its role of Employer under the Contract, award an extension to the service period of 2 years.

### 3.0 Reasons for Recommendations

- 3.1 The performance of the Contract is continually reviewed and assessed by the Contract Strategic Board. The Contract is eligible for a one year extension to the Service Period for each Financial Year in which they achieve satisfactory KSI performance. The board met on 8 August 2014 and assessed the Contractor's performance for 2012/13 and 2013/14, the outcomes in relation to the contract extension were:
  - **2012/13** - The Strategic Board considered that the Highway Service met or exceeded the KSIs that could be measured effectively at this stage of the Contract, and achieved the qualification criteria for an initial one year extension.
  - **2013/14** - The Strategic Board considered that the Highway Service met or exceeded the KSIs that could be measured

effectively at this stage of the Contract, and achieved the qualification criteria for a further one year extension.

- 3.2 Of particular note is the substantial improvement in *Employer Satisfaction* levels across 2012/13 and 2013/14 which have exceeded the target levels. Further areas of significant improvement above the target levels include *Delivering Value for Money*, the use of *Recycled Aggregates* and *Diverting Waste from Landfill*.

#### **4.0 Wards Affected**

- 4.1 All Wards are affected by the proposal.

#### **5.0 Local Ward Members**

- 5.1 All Ward Members are affected by the proposal.

#### **6.0 Policy Implications**

- 6.1 The extension of the Highway Service Contract will allow the Council to continue delivering greater value for money whilst reducing costs. The Contract actively contributes to the delivery of the Cheshire East Council Three Year Plan outcomes:

- Outcome 2: Cheshire East has a strong and resilient economy
- Outcome 4: Cheshire East is a green and sustainable place

- 6.2 The Contract Strategic Board will continue to monitor Contract performance against the 11 KSI in addition to the 18 Key Performance Indicators and 17 'Non-scoring' Performance Indicators.

#### **7.0 Financial Implications**

- 7.1. To date the volume of work delivered through the Contract has significantly exceeded that which was originally anticipated at the time of tender. This has come about for a number of reasons but the main sources relate to significant investment in the maintenance of the highway network via the Highway Investment Programme (HIP), the carbon reduction programme and a number of major strategic schemes.

- 7.2. The contract spend profile is demonstrated in Appendix A. This indicates that, based on expenditure to date and confirmed expenditure plans, the original Estimated Total Value (ETV), as specified in the original OJEU notice, is likely to be exceeded early in 2017 i.e. the 2nd quarter of the first potential extension year. It will go on to exceed the ETV by approximately 13%.

#### **8.0 Legal Implications**

- 8.1 The Employer may notify the Contractor that the Service Period is to be extended for a further period or periods not exceeding 2 years in total. Ringway Jacobs has satisfied the acceptable KSI Performance levels to entitle it to 2 years extension to the Service Period. Notwithstanding the Contractor achieving the acceptable KSI performance levels the

Employer has the discretion not to award an extension to the Service Period but only if acting reasonably.

8.2 The ETV appearing in the OJEU Notice that advertised the Contract will be exceeded. The ETV is not a strict cap that cannot be exceeded, however an increase in the ETV arising from substantial change or variation to the contract is not acceptable and is open to challenge as a direct award of a new contract. The increase in contract value in this Highways Services Contract is covered within the original scope of the Contract and has arisen from additional works, unforeseen at the time of tender.

8.3 Article 72 of the New Procurement Law Directive sets out new provisions relating to the modification of contracts during their term to clarify the law in this area. Flexibility is introduced to allow the contract to be adapted in the event of external circumstances that cannot be foreseen. Specifically, substantial modification will not require a new procurement procedure where the following cumulative conditions are met:

- The need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;
- The modification does not alter the overall nature of the contract; and
- Any increase in price is not higher than 50% of the value of the original contract.

In the current circumstances these conditions appear to have been met.

## **9.0 Risk Management**

9.1 The decision to award an extension would be unlikely to attract a legal challenge. However it is important that members are aware of the risk, however small, associated with a decision to award an extension.

9.2 There is a risk that performance levels are not maintained over the remaining contract period. To mitigate this, the Contract performance is linked to financial penalties/incentives to ensure the Service delivers continual improved performance.

## **10.0 Background and Options**

10.1 The service period of the Contract may be extended by one or two years. This is subject to satisfying two conditions:

- i. Ringway Jacobs meeting certain qualifying performance criteria as specified in the contract (outlined in **3.0**); and
- ii. The overall value of the work delivered through the contract should comply with the rules associated with the ETV as specified in the original OJEU notice. The ETV for this contract is £147m.

10.2 Notwithstanding the fact that Ringway Jacobs has met the specified performance criteria, the Employer retains the discretion whether to

award any extension to the service period. The Contract requires that any decision not to award an extension to the service period when the performance criteria has been met must be exercised reasonably.

## **11.0 Access to Information**

11.1 The background papers relating to this report can be inspected by contacting the report writer:

Name: Paul Traynor  
Designation: Strategic Commissioning Manager - Highways  
Tel No: 01260 371055  
Email: [paul.traynor@cheshireeast.gov.uk](mailto:paul.traynor@cheshireeast.gov.uk)