

<b>Report to</b>	Norwich highways agency committee 29 November 2012	<b>Item</b>
<b>Joint report of</b>	Director of planning, environment & transport and head of city development services	<b>8</b>
<b>Subject</b>	Re-procurement of ETD Highway Service	

---

### **Purpose**

To report on progress of the re-procurement of Norfolk County Council's ETD Highways and related Services

### **Recommendation**

That the committee;

- (1) considers the attached report to Norwich City Council's cabinet meeting held on 12 September 2012;
- (2) notes the recommendations of the report.

### **Financial implications**

None at this stage

### **Strategic Priority and Outcome/Service Priorities**

This project contributes to the core role of Norfolk County Council under the element of "assessing and commissioning". Also, under the change and transformation agenda, we have undertaken to "redesign and rescale services, explore new delivery models and work locally".

This work is to be included in the service plan for 2012/15 under the service objective of "manage, maintain and improve Norfolk's transport infrastructure to support sustainable economic growth"

Cabinet member: Councillor Bremner (city) – Environment and development  
Cllr Plant (county) – Planning and transportation

### **Contact officers**

Jon Barnard – City Agency and NATS manager

07909  
895214

### **Background documents**

None

# Report

## Background

1. The County Council has had contract arrangements with private sector companies since April 2004 to assist with delivery of its services, which in practice has focussed on the delivery of highway and related activities. These contracts end in March 2014.
2. A cross-party County Council Member Board, chaired by Cllr Graham Plant, was set up to oversee the development of the future contract proposals, based around previous work completed as part of the County Council's Strategic Review of Environment, Transport and Development Services. The new contract is scheduled to commence from April 2014.
3. The current contract arrangements have served the council well and are used by the City Council for an extensive range of highway services. They are considered to be an appropriate foundation for developing new arrangements from 2014.
4. This report updates NHAC on progress to date and seeks any comments from the Committee
5. The attached report at appendix A details the proposals, recommendations and timescales agreed by the Board and considered by the City Council's Cabinet in September 2012.
6. Key elements of the proposal in the attached report focus on agreeing to use the County Council's contracts to deliver the highways agency agreement services, bring forward the review of the Agency Agreement to align with the new highways contract and develop proposals for a highway ranger type service for the city.
7. The County Council's Environment, Transport and Development Overview and Scrutiny Panel considered the report at appendix B at its recent meeting and the County Council's Cabinet will be asked to approve the proposed approach at its meeting in December.

**Report to** Cabinet  
12 September 2012  
**Report of** Head of city development services  
**Subject** Norfolk county council highways re-procurement

Item

10

---

### **Purpose**

To agree opportunities arising from the county council's highways re-procurement process to take forward.

### **Recommendation**

Cabinet is recommended to:

- a) Agree to continue to use Norfolk County Council's contracts to deliver highways agency agreement services, excluding tree and verge maintenance, following the County Council's re-procurement of such services in April 2014;
- b) Ask officers to bring forward the review of the present highways agency agreement with a view to renewing in April 2014 to align and coincide with the County Council's proposed re-procurement of highways services;
- c) Ask officers to develop proposals for a highway's ranger type service for the city as part of any highways agency agreement review and re-procurement of highway services; and
- d) Agree to the option of using Norfolk County Council's contracts to deliver highways type works including winter maintenance on council owned land which is not adopted following the County Council's re-procurement of such services in April 2014.

### **Corporate and service priorities**

The report helps to meet all corporate priorities and the service plan priority to deliver the highway maintenance and improvement programme.

### **Financial implications**

The costs associated with taking forward the approach recommended in this report are estimated to be in the region of £7,000 in staff time. In contrast were the council to undertake its own re-procurement the estimated cost in staff time would be very considerable; the county council estimate their costs could be as high as £500,000.

Ward/s: All wards

Cabinet member: Councillor Bremner – Environment and development

**Contact officers**

Andy Watt

01603 212691

**Background documents**

None

# Report

## Background

1. Norfolk County Council has had contract arrangements with private sector companies since April 2004 to assist with delivery of “Environmental Services”, which in practice has focussed on the delivery of highway related activities. These contracts end in 2014, having already been extended to the maximum legally allowable term. Those highway activities not undertaken via these contracts (e.g. winter maintenance) are carried out by in-house teams.
2. The city council has responsibility to deliver a variety of highway related activities through the highways agency agreement with the county council. Until April 2010 these were delivered by CityCare. With the exception of highway tree and verge maintenance (which are separately contracted as part of the grounds and trees contracts), as part of the ‘CityCare re-procurement’ the council agreed that such activities should be delivered via the county council’s “Environmental Services” contract arrangements. In addition it was agreed that certain highway type activities not on adopted highway (e.g. pavement repairs on housing land and winter gritting of car parks and sheltered housing paths) could also be delivered via the county council’s contracts. This has been achieved through an agency agreement.
3. With these contracts now drawing to a close the council needs to decide how to deliver these services beyond 2014.

## County Council re-procurement approach

4. A cross-party member board was set up by the county council to oversee the development of the delivery arrangements from 2014. It has considered a number of options and concluded that a re-procurement along existing lines but with enhanced performance management should be the preferred way forward.
5. In coming to this conclusion the board noted that:
  - a) A strategic review has already generated annual savings of £1.5m from renegotiation of the current contracts and that achieving year on year efficiency improvements and financial savings will be a key opportunity and feature of the new contract.
  - b) Benchmarking and cost comparisons indicate that the cost is unlikely to vary significantly between in-house and contracted out delivery; that decision is more about the style of authority members are seeking, the degree of control and flexibility members wish for and the appropriate balance between public and private sector provision.
  - c) Benchmarking and performance data suggest that the current contract arrangements have served the council well and would be an appropriate foundation for developing new arrangements from 2014.
  - d) There is no one optimum model of service delivery in other authorities. Each council appears to select a model based on past experience, members’ preferences and local needs.

- e) A key feature of the choice will be the size of the client function the county council wishes to retain for contract management, budget control and other functions close to the democratic process and elected members.
  - f) It would be desirable to adopt a model which encourages employment of local people through the appropriate mix of in-house employed staff, appropriate contract requirements and carefully chosen evaluation criteria.
6. The conclusion reached by the member board was considered by the Environment, Transport and Development Overview and Scrutiny Panel on 11 January and Norwich Highways Agency Committee on 26 January. Both groups supported the board's recommendation. The approach was endorsed by the county cabinet at their meeting on 5 March.

### **City Council involvement**

7. With the end of the county contracts in 2014 the council is not under an obligation to continue to deliver services in this way; it could for example develop and implement its own re-procurement separate from anything the county council does.
8. This is not suggested, however and it is recommended that the council continues to deliver its highway responsibilities arising from the agency agreement through the county council. This is for the following reasons:
- a) **Experience to date.** The county contracts have served the city well with continuing good delivery of surfacing and improvement schemes and improvements in some areas such gully cleaning. Where issues have arisen, both the city and county councils can bring pressure to bear to ensure resolution.
  - b) **Economies of scale.** The value of works undertaken as part of the agency agreement is much less than the value of works across the county as a whole. A county wide approach enables economies of scale such as in depots, utilisation of plant etc. compared to a city only approach. There would be a lower proportion of fixed costs associated with the county wide approach compared to the latter.
  - c) **Procurement costs.** A county wide procurement is much cheaper than two separate procurements. Incorporating the city into the county wide procurement can be achieved at very low marginal cost. The cost of a city only procurement would not be affordable from present highway agency funding.
  - d) **Duration of agency agreement.** The present agency agreements last four years which is a short period for any contract and therefore a city only approach is likely to unnecessarily inflate costs (e.g. fixed costs having to be spread over a shorter period).
  - e) **Risk and resilience.** A county wide approach (i.e. achieved via delegation) removes any direct risk to the council should a contract fail. Risk is also reduced in the county having both a contractor and direct labour organisation element to deliver highway works. The size of the contract arrangements enables greater scope for resilience (e.g. if a major problem occurs in Norwich resources can be mobilised from across the county).

## Opportunities

### Agency agreement

9. The present highways agency agreement lasts until April 2015. However the agreement is partly influenced by the nature of any contractual arrangements to deliver works. Not least under the present system the county council delegates functions to this council which in turn are part delegated back to the county council. A simpler and more transparent system would be to have the one delegation agreement. It is therefore proposed to bring forward the review of the present agency agreement with a view to renewing in April 2014 to coincide with any new contracts.
10. Whilst it is not anticipated that the nature of the agreement will change significantly as well as simplifying arrangements it will help ensure that county requirements and city requirements are aligned with any contract details specified to ensure efficient delivery of both. It may be sensible to align agency agreement durations with contract review dates.

### Highway rangers

11. The county council has introduced a highways ranger service. Whilst this service – such as sign washing – fulfils an asset management requirement, it has also been possible to tailor it to better meet residents' wishes and not to be simply driven by assessment of condition based only on surveys or highway inspections. The services are very well regarded by the public and county members. Unfortunately in transferring to the county contracts from CityCare it has not been possible to introduce a similar service in the city.
12. The county's rangers' service is aligned around parish councils and also includes elements of verge and tree maintenance which in the city are covered in the grounds and trees contracts. However, city and county officers have concluded that something like the highways ranger service would be possible to introduce in the city helping to better meet resident's wishes and making use of the present neighbourhood working model as a template. It is recommended that this be taken forward as part of the county re-procurement/agency review

### Highway type works on housing and other council owned land

13. The volume of highway type works on housing and other council owned land delivered through the county contracts since the end of CityCare has been limited amounting to some £100,000 p.a. Such work has included a variety of routine repairs, winter maintenance and some programmed surfacing. It has been successfully delivered, particularly in relation to winter services, where the county have been able to guarantee supply of salt at very competitive prices through two severe winters.
14. Given successful delivery to-date and the relatively low volume of work involved it is recommended that the council seeks to continue being able to deliver such work via the county contracts. The county council contracts will have gone through a re-procurement to demonstrate best value. As with the present arrangements the intention would be allow this as an option but not to be tied to using the contracts (e.g. to enable market testing from time to time).

## Integrated impact assessment



**NORWICH**  
City Council

The IIA should assess **the impact of the recommendation** being made by the report

Detailed guidance to help with completing the assessment can be found [here](#). Delete this row after completion

### Report author to complete

<b>Committee:</b>	Cabinet
<b>Committee date:</b>	12 September 2012
<b>Head of service:</b>	Head of city development services
<b>Report subject:</b>	Norfolk county council highways re-procurement
<b>Date assessed:</b>	10 August 2012
<b>Description:</b>	



	Impact			
<b>Economic (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Finance (value for money)</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Re-procurement of highways services will ensure competitive market testing of such services to help ensure best value
<b>Other departments and services e.g. office facilities, customer contact</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>ICT services</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Economic development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Financial inclusion</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The county council wish to adopt a model which encourages employment of local people through the appropriate mix of in-house employed staff, appropriate contract requirements and carefully chosen evaluation criteria
<b>Social (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Safeguarding children and adults</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b><u>S17 crime and disorder act 1998</u></b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Human Rights Act 1998</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

	Impact			
Health and well being	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Equality and diversity (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
Relations between groups (cohesion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Advancing equality of opportunity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Environmental (please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Potential to improve utilisation of vehicles and plan to reduce transport costs
Natural and built environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Waste minimisation & resource use	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Potential efficiencies associated with a county wide approach which could help reduced waste and resource use, reduce pollution and minimize climate change impact
Pollution	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Sustainable procurement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Energy and climate change	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<b>(Please add an 'x' as appropriate)</b>	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>

	Impact			
<b>Risk management</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Reduced risk to the council in delivery of highway services via the county council's contracts

Recommendations from impact assessment	
<b>Positive</b>	
	Take steps to help the County Council to achieve local employment, training, apprenticeships, etc. and to help deliver sustainable procurement.
<b>Negative</b>	
	n/a
<b>Neutral</b>	
	None
<b>Issues</b>	
	None

## ETD Procurement of Highway and Related Services

Report by the Director of Environment, Transport and Development and the Head of Procurement

### Summary

The appended Outline Business case (OBC) sets out, for consideration by Members, the proposed approach to the new highway and related services contracts which have to be in place by April 2014. It places particular emphasis on the structure of the new contractual arrangements and the proposed commercial deal. It also sets out the criteria which will be used to shortlist tenderers and then to make the final contract award decision.

Discussion with prospective bidders has indicated that dividing the procurement into three separate contracts is likely to generate the optimum degree of competition. In addition, it offers an opportunity to phase the procurement to allow the most effective use of available specialist skills in managing the process.

The officer team procuring the works contract – by far the largest of the three - will complete its work in mid-summer. To avoid a protracted award process, which would be difficult to manage and which would leave open a window for legal challenge, it is proposed that following consideration by the cross party member Board, the process should move as quickly as practicable to a formal decision by Cabinet. Therefore, officers recommend that, on this occasion, the award decision is not considered by ETD Overview and Scrutiny Panel before going to Cabinet.

The result of the procurement exercise will be determined by the shortlisting and award criteria. It is therefore essential that members are content with the criteria proposed, as they cannot be changed in mid-procurement.

The Professional Services and Traffic Signals contracts are relatively small in value and it would be appropriate to delegate the award decision to the Director of Environment, Transport and Development in consultation with the Head of Procurement and the Cabinet Member for Planning and Transportation.

A further outline business case, concentrating specifically on traffic signals, will be brought to Panel after Christmas.

### Action Required

Overview and Scrutiny Panel is asked to:

- Comment on the Outline Business Case for the procurement of the Works and Professional Services providers
- Recommend that Cabinet approves the evaluation criteria set out in the Outline Business Case
- Recommend that Cabinet approves the approach outlined and endorses three separate contracts
- Note that the report recommending award of the Works contract will be reported direct to Cabinet without going via Scrutiny.
- Recommend that Cabinet approves the publication of the OJEU for the works contract in December 2012 and for the Professional Services contract in February 2013
- Recommend that Cabinet approves the procurement programme phasing set out in section C4.3 of the Outline Business Case
- Recommend that Cabinet delegates the award of the Professional Services and Traffic Signals contracts to the Director of Environment, Transport and Development in consultation with the Head of Procurement and the Cabinet Member for Planning and Transportation.

## 1. **Background**

- 1.1. The County Council has had contractual arrangements with private companies since April 2004 to assist with delivery of “Environmental Services”, which in practice have focused on the delivery of highway-related activities. These contracts end in 2014. One contract is with May Gurney for highway maintenance and construction works (including a sub-contract for traffic signals) and one with Mott MacDonald for professional advice, scheme design and project management. Both companies work in partnership with the county council and work collaboratively with the in-house teams to provide integrated service delivery.
- 1.2. The current contract arrangements include a mix of in-house and outsourced provision for both blue and white collar services. The department maintains a client capability to manage the performance of the contracting partners, whilst benefiting from private sector innovation, expertise and economies of scale. Senior managers from the partners are closely integrated with those of the department, meaning that they have a good understanding of the Council’s needs and are quick to reflect changes in emphasis and priorities, without the need for formal contractual revisions. This gives the Council a flexible and responsive service.
- 1.3. A range of options for reprocurring the highway related services, with their associated pros and cons, were presented to Overview and Scrutiny Panel in January 2012 and considered by Cabinet on 5 March 2012.
- 1.4. Option F2+ (“broadly as existing arrangements with enhanced performance management”) was approved by Cabinet as the preferred option.
- 1.5. This report asks Members to comment on, and recommend to Cabinet that it approves, the proposed approach to re-procuring these contracts, in particular the programmes, risk allocation, performance management and selection and evaluation criteria which will be used to choose the winning bidders. The selection and evaluation criteria cannot be modified once the formal procurement exercise starts.

## 2. **Outline Business Case (OBC)**

- 2.1. The OBC is the strategic document that sets out the approach to the procurement process. Members are requested to give particular attention to the Commercial Case (section C, page 13) and the Financial Case in (section D, page 60).
- 2.2. References to decisions and recommendations made by Members so far within this process have been referenced within the OBC and are explained by footnotes on the relevant pages
- 2.3. Commercial Case  
The Commercial Case documents the scope and composition of the three contracts which are on offer – Works (described as contract A), Professional Services (contract B) and Traffic Signals (contract C). It also illustrates the key milestones for the procurement process for contracts A and B. A separate OBC is being produced for Contract C.
- 2.4. Officers have been refining the timescales for the three procurement exercises and have concluded that it would be sensible, whilst still delivering within the original overall timescales, to phase them to avoid over-stretching resources, particularly during the dialogue part for the most complex contract – that for works, which is

valued at some £400million. The Works contract will be delivered to the programme previously set out. It is suggested the professional services and the traffic signals contracts are reprogrammed to be completed slightly later, but still in good time for the start date of April 2014.

- 2.5. The proposed procurement timetable for Contracts A and B is set out in section C4.3 of the OBC. A separate OBC for the traffic signals contract is being prepared and will be brought to this Panel and to Cabinet early in 2013. The OJEU and Pre Qualification Questionnaire (PQQ) for professional services will be published in February 2013 (as opposed to December 2012 for the Works contract) and that competitive dialogue will proceed soon after that for the Works contract. Competitive dialogue is a very intensive process and critical to help with the selection of the most appropriate provider. For this reason, it is proposed that this part of the process does not run concurrently for the three contracts. The award dates for the Professional Services and Traffic Signal contracts will be late autumn 2013.
- 2.6. The works contract will be the largest and most complex to set up, therefore, it should have the longest mobilisation period. The technical work on the evaluation will be complete in late July and will then be considered by the cross party member Board. There are also statutory processes to complete including allowing time for legal challenge to the decision. It would be most appropriate for the cross party member Board to report directly to the earliest available Cabinet meeting which is likely to be in September. This would make it impracticable for the award decision to be considered by this Overview and Scrutiny Panel before going to Cabinet. The award recommendation and decision will be determined by application of the evaluation criteria selected before the procurement begins. It is important to emphasise that this meeting is the opportunity for Scrutiny to review the proposed evaluation criteria, which will form the basis of the contract award. This cannot be changed once bidders have been informed after publication of the OJEU notice. Members must be happy with the evaluation proposals as they will determine which bidder is awarded the contract.
- 2.7. Section C9 of the OBC sets out the proposed selection and award criteria that officers will use. The selection criteria (C9.1) will be used to shortlist suppliers based on their responses to the pre-qualification questionnaire (PQQ), which deals with track record, financial stability and technical capability. The criteria are weighted to reflect their importance. We will select organisations that we wish to enter into dialogue with, based upon the selection criteria.
- 2.8. The award criteria (C9.2) will be used to shortlist further (down to three bidders) and then applied to the solutions and prices they offer at final tender. These criteria reflect Members' priorities for the new arrangements, which have been documented in previous Cabinet reports. The weighting of the criteria between quality and price is a finely balanced judgement. Officers recommend using a 60:40 quality price split for the professional services contract, but to adjust that to a 55:45 split for the works contract to reflect its significantly higher cost and a greater scope to apply rigorous standards and specification for delivery.
- 2.9. Financial Case  
The Financial Case details the value of the services that will be covered by this procurement programme based upon 2011/12 budget figures. It also sets out how

affordability will be assessed and how liabilities and balance sheet treatment will be dealt with as part of the evaluation process.

### 3. **Resource Implications**

#### 3.1 **Finance :**

Limited use is being made of external technical advisers but the bulk of the work is being undertaken by internal resources. The procurement process is designed to deliver better value for money from the contracts.

#### 3.2 **Staff :**

Delivery of the project is involving a cross-functional team including officers from Highways, Travel and Transport, Procurement, Legal, Human Resources and other parts of the authority.

It is not anticipated that any council staff will be transferred out as part of the process. Some ex-council staff will transfer from the existing to the new works provider, if the contract changes hands.

#### 3.3 **Property :**

Sharing of highways depots with Suffolk County Council is being explored as we work with them in our respective procurement processes. We are assessing the property assets that could be made available for the providers as part of the new arrangements together with determining the cost implications of this.

#### 3.4 **IT :**

Changes and compatibility to system requirements will be considered during the procurement process and competitive dialogue.

We are in the process of sourcing a virtual data room. This is a secure electronic system that will enable all prospective bidders to view key documents which they need for the due diligence process so that all interested parties will have access to the same information during the bidding process.

### 4. **Other Implications**

#### 4.1 **Legal Implications :**

NP Law continue to be engaged throughout this procurement process to mitigate any legal risks The main issues will be compliance with procurement law; compliance with employment and equalities law concerning staff transfer; and contractual robustness.

We have engaged the services of NEC contract specialists (Buro Happold) to help us to ensure that the contracts and their terms and conditions represent the best interests of Norfolk County Council.

#### 4.2 **Equality Impact Assessment (EqIA) :**

It is anticipated that the evaluation process of any bidder will assess their approach to equality. Staffing issues would be considered as part of TUPE transfer if needed.

#### 4.3 **Communications :**

The Council has been open and transparent throughout this process and has invited interaction with potential providers. A stakeholder analysis and communications plan has been developed as part of the programme and there are no urgent communications issues.

#### 4.4 **Health and Safety Implications :**

Health and Safety criteria have been incorporated within the PQQ for the selection process and will be explicit within the evaluation criteria. There will be suitable health and safety stipulations in the contract conditions. Health and Safety specialists have been and will continue to be engaged in this process.

#### 4.5 **Environmental Implications :**

As part of the detailed contract development, sustainability criteria is being considered and incorporated into the shortlisting and award criteria and the contract terms.

The performance management regime for the new arrangements will include sustainability measures which have been worked up in conjunction with the Sustainability Team.

#### 4.6 **Any other implications:** Officers have considered all the implications which members should be aware of. Apart from those listed in the report (above), there are no other implications to take into account.

### 5. **Section 17 – Crime and Disorder Act**

#### 5.1 None

### 6. **Risk Implications/Assessment**

#### 6.1 Risks and risk allocation relating to the proposed contract arrangements has been considered as part of the OBC (section C5.2 from page 21)

A risk register relating to risks associated with the delivery of the procurement programme has also been developed and is appended to the OBC. This is now reviewed at every meeting of the Cross Party Member Procurement Board.

## **Action Required**

Overview and Scrutiny Panel are asked to

- (i) Comment on the Outline Business Case for the procurement of the Works and Professional Services providers
- (ii) Recommend that Cabinet approves the evaluation criteria set out in the Outline Business Case
- (iii) Recommend that Cabinet approves the approach outlined and endorses three separate contracts
- (iv) Note that the report recommending award of the Works contract will be reported direct to Cabinet without going via Scrutiny
- (v) Recommend that Cabinet approves the publication of the OJEU for the works contract in December 2012 and for the Professional Services contract in February



2013

- (vi) Recommend that Cabinet approves the procurement programme phasing set out in section C4.3 of the Outline Business Case.
- (vii) Recommend that Cabinet delegates the award of the Professional Services and Traffic Signals contracts to the Director of Environment, Transport and Development in consultation with the Head of Procurement and the Cabinet Member for Planning and Transportation

## Background Papers

Cabinet (5 March 2012) - ETD Highways Re-procurement – identifying and analysing options for the procurement of services to take effect from 2014. Approval of preferred option.

ETD Overview and Scrutiny Panel (11 January 2012) - ETD Highways Re-procurement – identifying and analysing options for the procurement of services to take effect from 2014.

Cabinet (24 January 2011) - Environment, Transport and Development Strategic Review – future service delivery method

## Officer Contact

If you have any questions about matters contained in this paper please get in touch with:

<b>Name</b>	<b>Telephone Number</b>	<b>Email address</b>
Al Collier	01603 223372	al.collier@norfolk.gov.uk
Nick Haverson	01603 228864	nicholas.haverson@norfolk.gov.uk



If you need this report in large print, audio, Braille, alternative format or in a different language please contact 0344 800 8020 and ask for Nick Haverson or textphone 0344 800 8011 and we will do our best to help.

# Highways and related services procurement

NCCT40037  
Outline Business Case

16 October 2012



## SYNOPSIS

1. Norfolk County Council needs to replace its current contractual relationships – known as the Norfolk Strategic Partnership – for the provision of highways and related services. These arrangements include both professional services, including advisory and design services – and technical services, including highway construction, maintenance and repair, and traffic signals.
2. The main purpose of this Outline Business Case is to: revisit the case for change and the preferred way forward identified in the strategic review last year; establish the option which optimises value for money; outline the proposed deal and assess affordability; and demonstrate that the proposed approach is deliverable.

## VERSION CONTROL

*From version 0.1 onwards*

<b>Version</b>	<b>Date</b>	<b>Issued by</b>	<b>Purpose</b>	<b>Circulation</b>	<b>Main changes from previous version</b>
<b>0.4OSP</b>	<b>16/10/12</b>	<b>Steering Group</b>	<b>For review by ETD OSP</b>	<b>ETD OSP</b>	<b>Iterated following discussion with Member project board</b>

## CONTENTS

Contents.....	5
A Strategic case .....	7
A1 The strategic context .....	7
A2 The case for change .....	7
B Options appraisal .....	9
B1 Introduction .....	9
B2 Gully emptying & traffic signals .....	9
C Commercial case.....	11
C1 Existing contractual arrangements .....	11
C2 Concept viability day.....	12
C3 Required services.....	12
C4 Procurement strategy .....	13
C4.1 Procurement approach.....	13
C4.2 EU Procurement Procedure .....	15
C4.3 Procurement timetable.....	16
C5 Commercial terms.....	18
C5.1 Standard form contracts .....	18
C5.2 Risk transfer .....	19
C5.3 Risk allocation matrix.....	24
C5.4 Payment mechanisms.....	37
C5.5 Incentives, term and ongoing value for money.....	37
C5.6 Service levels.....	39
C6 Major contractual conditions.....	40
C7 Sustainability requirements .....	45
C8 Advertisement.....	55

C9	Evaluation criteria .....	55
C9.1	Introduction .....	55
C9.2	Selection.....	55
C9.3	Award .....	56
C10	Contract management arrangements .....	56
D	Financial case .....	58
D1	Financial expenditure.....	58
D2	Overall affordability and balance sheet treatment .....	59
E	Management case.....	61
E1	Project management arrangements.....	61
E1.1	Cabinet approval and Scrutiny.....	61
E1.2	Project Board .....	62
E1.3	Officer steering group.....	62
E2	Benefits realisation and risk management .....	63
E3	Post project evaluation arrangements .....	63
F	Annexes.....	64

## A STRATEGIC CASE

### A1 THE STRATEGIC CONTEXT

1. The Environment, Transport and Development (ETD) department's existing contractual arrangements with May Gurney and Mott MacDonald began in July 2004. The period of the contracts with May Gurney and Mott MacDonald is 10 years, with provision for break points at five and eight years.
2. The eight year break point for the contracts occurred in 2012. A decision on whether or not to terminate the contracts at this break point needed to be made around two years beforehand, to allow sufficient time for any new procurement process to be completed, and new contractual arrangements set up before the existing contracts expire, if it were decided that any procurement was required. This was at a time when the Council, and the Department, were faced with significant challenges including budget, service, performance and demographic pressures.
3. The financial pressures facing the Council meant that there was a need to reduce costs significantly over the following three years. A corporate change programme was put in place to take forward a programme of work to help Norfolk County Council meet these challenges. This programme prompted the need for individual Departments to carry out appropriate service review and transformation to bring about change and modernisation.
4. ETD conducted a Strategic Review which brought together the work needed to review the Partnership arrangements in advance of the 8 year break point. One of the conclusions was to continue with the current contracts for the full term under re-negotiated conditions and that preparations be made for the procurement of new arrangements to commence April 2014.
5. The Strategic Review identified various procurement options for the new contract arrangements from April 2014. In March 2011, Cabinet was presented with an analysis of these options. It was agreed by Members to proceed with an option that would build on the current successful arrangements and to develop some of the improvements achieved in the renegotiation, for example, more refined performance indicators and more pressure to encourage innovation, initiatives and reduce costs.

### A2 THE CASE FOR CHANGE

1. Change is, to an extent, unavoidable owing to final expiry of the existing arrangements. The issue is therefore what the new arrangements should achieve.



2. Considering the external challenges highlighted above, the Strategic Review identified critical success factors which were used to help evaluate the various options for future service provision from April 2014. These were agreed by Members and should be applied to the re-procurement. The critical success factors were as follows.

1	Reduced cost of managing the existing assets and delivering services. This should be measured in terms of unit costs and be in addition to any reduction in works.
2	Retain sufficient client side skills to protect our highway authority responsibilities and ensure we can challenge / monitor contractors effectively.
3	Maximise the usage, or realisation, of existing property and other assets. This will be considered in line with the Norfolk Forward Accommodation Strategy.
4	Retain capacity to deal with severe winters. Winter gritting and winter resilience is a key service to the department
5	Have access to resources that can be flexible to respond to the challenge of varying workloads. This will ensure that any upturn, or downturn, in financial support can be maximised with minimum effect.
6	Ensure we have capability to deliver essential infrastructure for the County, if funding opportunities arise.
7	Maximise opportunities for service innovation and efficiency savings.
8	Facilitates joint working with partner organisations and devolution of services where appropriate.
9	Enables good engagement with residents, businesses and parish councils.

## B OPTIONS APPRAISAL

### B1 INTRODUCTION

1. An options appraisal was undertaken as part of the Strategic Review. This concluded that the preferred option was to re-procure on a similar basis to the current contracts, with enhanced performance management. That analysis is not repeated here.
2. The Strategic Review also took the view that winter maintenance and the 'parish ranger' service should remain in-house.
3. The council is in long-term Private Finance Initiative (PFI) contracts for street-lighting and for the supply of salt.
4. The options at this stage are therefore rather more tactical. The issues considered are:
  - a. whether the works contract should be divided into smaller units;
  - b. the approach to the traffic signals contract.

### B2 GULLY EMPTYING & TRAFFIC SIGNALS

1. The current works contract, delivered by May Gurney, covers a wide range of 'blue collar' services. Whilst May Gurney delivers some of these services itself, a significant proportion is delivered by sub-contractors. This includes surfacing, surface dressing, white-lining, gully emptying, traffic signals and grass cutting.
2. May Gurney's role in these sub-contracts is largely to manage the delivery of the programmed works and to procure and manage the sub-contractors. The fundamental issue is whether the benefits of the prime contractor undertaking the activity (including the avoidance of a larger client side, the coordination of activity, the prime contractor's buying power, and having a central point of responsibility) outweighs the cost (the prime contractor's fee, and extended lines of communication between the council and the contractor delivering the work).
3. In discussion with stakeholders, two areas were identified for serious review. These were gully emptying, and in particular, traffic signals.
4. We consulted with the industry at the concept viability day (discussed in more detail at section C2). The view from works contractors was that it is usual to include gully emptying in the works contract, but that traffic signals is often separated.
5. We reviewed internally whether any benefits would be derived from separating out gully emptying, in light of this feedback. The general view was that this would simply transfer cost back onto the client side, where more staff would be required, and that the prime contractor would have more market leverage than the county council.

6. Accordingly, gully emptying remains in scope for the works contract.
7. On the other hand, the view is that little value is added by the current prime contracting arrangements for traffic signals. A significant client side is needed in any case, owing to the linkages between signals, bus priority and real time passenger information and the role signals play in reducing congestion.
8. This client side is co-located with the signals sub-contractor's staff, but has to route all commercial issues through the prime contractor. This makes little sense.
9. There is a need for further investment in traffic signals in order to reduce whole-life costs. In particular, further investment in extra-low voltage (ELV) signals is expected to be worthwhile, as this reduces both electricity consumption and routine maintenance frequencies.
10. There is also a need to invest in replacement communications technology for part of the traffic signal network. The current, analogue data connections are being phased out by British Telecom (BT), and analogue network terminating equipment for traffic signals is no longer available. The network connections support bus priority and other features, and so, unless the obsolescent equipment is replaced, important functionality will be lost.
11. It is therefore proposed that:
  - a. the traffic signals contract be procured as a separate lot;
  - b. the required investment be included in the contractual requirement.
12. A supplementary business case for traffic signals, setting out the approach in more detail, is at Annex D.

## C COMMERCIAL CASE

### C1 EXISTING CONTRACTUAL ARRANGEMENTS

The existing contractual arrangements are set out below.

<b>Contract</b>	<b>Contractor</b>	<b>Standard form</b>	<b>Impact of this procurement</b>	<b>Scope</b>
Works Contract	May Gurney	New Engineering Contract 2: Engineering Construction Contract (NEC2 ECC)	To be superseded by new contractual arrangements. Traffic signals to be split out as a separate lot.	All construction and bridgeworks; routine maintenance work such as grass cutting, weed spraying, gully emptying, safety fence repairs, road lining and cats eyes; surface dressing and resurfacing; traffic signals.
Professional Services Contract	Mott MacDonald	New Engineering Contract 2: Professional Services Contract (NEC2 PSC)	To be superseded by new contract	Project management, scheme feasibility and design, stakeholder consultation, bridge inspection and assessment, traffic modelling, public transport and environmental advice and design and project management of schemes such as household waste recycling centres (but not the operation of such facilities)

Contract	Contractor	Standard form	Impact of this procurement	Scope
Street Lighting	Amey	Private Finance Initiative (PFI)	To remain until 2032	All design, procurement, installation, commissioning and maintenance of street lights and illuminated traffic signs, including introducing new technology and energy saving initiatives
Salt	Salt Union	Private Finance Initiative (PFI)	To remain until 2020	Provision, storage and loading of salt for winter maintenance

## C2 CONCEPT VIABILITY DAY

1. A concept viability day, facilitated by Intellect, was undertaken on 14 July 2012 and has informed the procurement strategy. Intellect's report is at Annex A.

## C3 REQUIRED SERVICES

1. Three contracts are required:
  - Contract A – works
  - Contract B – professional services
  - Contract C – traffic signals
2. The detailed scope of each is set out below.

Contract	Scope	Principal exclusions
A	All construction and bridgeworks; routine maintenance work such as grass cutting, weed spraying, gully emptying, safety fence repairs, road lining and cats eyes; surface dressing and resurfacing	Street lighting and traffic signals (to be delivered through Contract C), highway rangers (local in-house small maintenance works), winter maintenance services, emergency response <sup>1</sup> .

<sup>1</sup> Winter maintenance and emergency response will be included in the scope of the Official Journal of the European Union (OJEU) notice (a) to permit their later transfer to the contractor if so desired; and (b) so that the contractor can provide labour and plant in emergencies.

Contract	Scope	Principal exclusions
B	To provide additional support to the in-house design teams for project management, scheme feasibility and design, stakeholder consultation, bridge inspection and assessment; traffic modelling; public transport and environmental advice and design and project management of schemes such as household waste recycling centres (but not the operation of such facilities)	Client function, asset and programme management, area and contract management, network management and safety, highways development control and urban traffic control room. Feasibility and design work (the majority) undertaken by the in-house teams.
C	To provide a traffic signal and intelligent transport equipment maintenance service as a main contractor. To supply and install new traffic control and intelligent transport systems equipment as a main contractor working in partnership with the works contractor	Construction works undertaken under Contract A. Contract A will be used for all significant construction works.  <i>To be confirmed whether, where the traffic signals contractor is undertaking upgrade or installation works and there is no other significant civils works being undertaken at the site, the signals contractor will be responsible for the civils work.</i>

## C4 PROCUREMENT STRATEGY

### C4.1 PROCUREMENT APPROACH

#### C4.1.1 USE OF EXISTING FRAMEWORKS OR CONTRACTS

- No existing contracts or combinations of contracts were identified which would cover the entire scope of the services. The main collaborative opportunities identified were:
  - The Eastern Highways Alliance<sup>2</sup>
  - Use of collaborative contracts for vehicle purchase, plant hire, materials and signage, via Eastern Shires Purchasing Organisation (ESPO)
  - Collaboration with Suffolk County Council

<sup>2</sup> The use of other contract options provides the flexibility to benchmark as per the Cabinet report of 5 March 2012 when contract option "F2+" was endorsed.

Background	Decision
<i>The Eastern Highways Alliance (EHA)</i>	
<p>The EHA is a collaboration involving Hertfordshire County Council, Essex County Council, Cambridgeshire County Council, Suffolk County Council, Norfolk County Council, Central Bedfordshire Council, Bedford Borough Council, Luton Borough Council and Southend-on-Sea Borough Council<sup>3</sup>.</p> <p>It has let a framework for the delivery of medium-sized highway schemes. The selected contractors are Ringway/Eurovia, Geoffrey Osborne, Jackson and Tarmac<sup>4</sup>. The Council is currently using the EHA framework to market test its existing contractual arrangements [brief further details needed].</p>	<p>The use of the EHA framework as the main contractual vehicle for delivery of medium-sized schemes was considered at Strategic Outline Case stage. However, it was considered that such an approach would make the proposed contract unattractive to bidders, leading to reduced competition and probably higher costs.</p> <p>Accordingly, the EHA Framework will be kept in reserve as a means to market test occasional schemes, and as a back-up option in case of major difficulties with the new contract or if the appointed contractor cannot deliver the necessary capacity for a major peak of work.</p>
<i>Eastern Shires Purchasing Organisation (ESPO)</i>	
<p>The retained highway ranger and routine maintenance service, and the winter maintenance service, will have a continued requirement for materials (including aggregates, concrete and concrete products and bituminous products), hand and power tools, signage, plant hire, vehicles and fuel.</p> <p>Traditionally, these have been provided through ESPO contracts. It is important to note though that, in most cases, these are not collaborative contracts, but contracts let by ESPO as Norfolk's agents.</p>	<p>These areas to be out of scope of Contract A and opportunities for joint procurement, through ESPO or otherwise, to be explored.</p>

<sup>3</sup> Source: [http://www.local.gov.uk/web/guest/productivity/-/journal\\_content/56/10171/3487227/ARTICLE-TEMPLATE](http://www.local.gov.uk/web/guest/productivity/-/journal_content/56/10171/3487227/ARTICLE-TEMPLATE)

<sup>4</sup> Source: <http://www.theconstructionindex.co.uk/news/view/four-named-for-75m-eastern-counties-highways-framework>

Background	Decision
<i>Suffolk County Council</i>	
<p>The authority held detailed discussions with Suffolk County Council about contracting jointly for highway services, but agreed ultimately<sup>5</sup> that this would not be in its best interests. The main issues were:</p> <ul style="list-style-type: none"> <li>• Suffolk’s accelerated timetable</li> <li>• Differences as to scope – Suffolk wished to outsource much more of the client function, and also needed to include street lighting, which is provided under a separate PFI in Norfolk.</li> <li>• Differences in philosophy – Suffolk wanted to take a more outcome-based approach than Norfolk</li> <li>• Concerns expressed by the industry about the scale of a joint Norfolk-Suffolk procurement excluding all but the largest firms.</li> </ul> <p>Nevertheless, the two councils are co-operating closely in order to reduce procurement costs, standardise specifications and contract terms as far as practicable, and facilitate cross-border working.</p>	<p>Suffolk has placed an Official Journal of the European Union (OJEU) notice, number 2012/S 22-035444, for its highways procurement. This stated:</p> <p style="text-align: center;"><i>The Council may look to provide services to other organisations and will look to retain the flexibility to deliver those services via this contract. The Council may place orders under this contract on behalf of other local authorities or organisations within the geographic area of Essex (including Southend-on-Sea and Thurrock), Hertfordshire, Cambridgeshire (including Peterborough), Norfolk and Suffolk.</i></p> <p>This provision supports cross-border working, and it is intended that a similar provision should be contained in Norfolk’s OJEU, covering Suffolk and other neighbouring counties.</p>

## C4.2 EU PROCUREMENT PROCEDURE

1. The choice of procurement route is essentially between the Restricted and Competitive Dialogue procedures. Both have their merits.

### Restricted procedure

2. The Restricted procedure is a two-stage procedure involving selection of a shortlist – typically of five candidates – to be invited to tender. It is less demanding of resources and less costly for bidders and the contracting authority. However, it is a ‘fire and forget’ process – the bidders tender against set contract terms and specification, and there is no opportunity to fine-tune responses. It is therefore critical that, where used, the market should be consulted before the procurement commences to make sure that the proposed terms are acceptable, and that the specification is extremely clear.

<sup>5</sup> The Cabinet minutes of 11 June 2012 record: ‘We have been sharing ideas and experiences in a joint process [with Suffolk County Council] which has been endorsed by members in both counties. This will not result in Suffolk and Norfolk sharing the same contract’.



3. An electronic auction can be used in conjunction with the Restricted procedure.

### **Competitive dialogue**

4. Competitive dialogue is a sequential procurement process where the number of bidders is reduced in stages, typically to three bidders with whom a detailed dialogue is conducted. The process permits the client and the bidders to understand each other's requirements and to focus on areas where overall cost and risk can be reduced.
5. However, competitive dialogue can be an expensive and time-consuming process for all parties. For this reason, the Cabinet Office recommends that it should be used only where essential, and that a 'lean' approach should be deployed.
6. An electronic auction cannot be combined with a competitive dialogue.

### **Choice of procedure**

7. It is proposed that Competitive Dialogue be used for both works and professional services. The final choice of route for traffic signals will be brought to Cabinet in the separate business case for that lot.

---

## **C4.3 PROCUREMENT TIMETABLE**

1. The procurement will be undertaken using 'lean' techniques, based on the standard operating procedures developed by the Cabinet Office. The team has undertaken lean training run by Unipart, who helped develop the lean processes. Further discussions are taking place with Cabinet Office.
2. Experience in central government is that these techniques significantly reduce the length of the dialogue process. There is considerable emphasis on up-front preparation in order to make the dialogue as productive as possible. The timescale being followed for this project reflects this philosophy.
3. The most significant procurement exercise is, obviously, the works contract. In accordance with the lean principles, it is important that we do not attempt to split the team across multiple, simultaneous contracts.
4. Accordingly, the works competitive dialogue will take place first. In parallel, a separate procurement team will undertake the initial stages of the professional services and traffic signals contracts.
5. The dialogue stage for these contracts will not commence until after the provisional award of the works contract.

6. The outline timescales are set out below.

<b>Key Milestones – Works (Contract A)</b>	<b>Date</b>
Cabinet approved scope of contract	5 March 2012
Outline Business Case and approval of Official Journal ('OJEU') notice advertising the contract	Late autumn/winter 2012
Publish OJEU notice and undertake short listing	December 2012
Competitive dialogue with shortlisted contractors	Spring/Summer 2013
Award contract and commence mobilisation/transition	Autumn 2013
Start of new contract	April 2014

<b>Key Milestones – Professional Services (Contract B)</b>	<b>Date</b>
Cabinet approved scope of contract	5 March 2012
Outline Business Case and approval of Official Journal ('OJEU') notice advertising the contract	Late autumn/winter 2012
Publish OJEU notice and undertake short listing	January 2013
Competitive dialogue with shortlisted contractors	June 2013
Award contract and commence mobilisation/transition	October/November 2013
Start of new contract	April 2014

<b>Key Milestones – Traffic Signals (Contract C)</b>	<b>Date</b>
Cabinet approved scope of contract	5 March 2012
Outline Business Case and approval of Official Journal ('OJEU') notice advertising the contract	Late autumn/winter 2012
Publish OJEU notice and undertake short listing	April 2013
<i>Details to be confirmed in Traffic Signals Outline Business Case</i>	
Award contract and commence mobilisation/transition	December 2013
Start of new contract	April 2014

## C5 COMMERCIAL TERMS

### C5.1 STANDARD FORM CONTRACTS

1. All contracts will be based on the New Engineering Contract (NEC3) standard terms, with the use of 'Z' clauses being as limited as possible.
2. The standard form of contract includes a partnering clause (Option X12), which allows for enhanced payments to be made to providers should they exceed the performance expectations within the partnership arrangements. However, it is the intention within these contracts to set standards and specification at an appropriate level and pay providers for achieving them (with deductions for not achieving them). Aspirations around partnership will be set out in an additional 'Z' clause and use the performance management framework to drive these behaviours.
3. The detailed proposals for use of NEC3 are as follows.

Contract	NEC3 contract(s) to be used	Main option	Secondary options
<b>A</b>	Term services contract (TSC)	Modifiable such that the relevant option (A – Priced contract with price list, C – Target contract with price list or E – Cost reimbursable contract) may be selected at the time of ordering (orders using X.19 task orders)	W.2 – Dispute resolution, X.1 – Price adjustment for inflation, X.2 – Changes in law, X.4 – Parent company guarantee, X.19 – Task Order, Y(UK)2, – HGCRA (payment terms), Y(UK)3 – Contracts (Rights of Third Parties) Act 1999, suitable Z clauses including substitute for X.12 – Partnering.
<b>B</b>	Professional services contract (PSC)	Option G Modified drafting to support use of Option C under X.19 orders where appropriate	W.2 – Dispute resolution, X.1 – Price adjustment for inflation, X.2 – Changes in law, X.4 – Parent company guarantee, [X.9 – Transfer of rights, X.10 – Employers Agent, X.11 – Termination by the Employer?], X.18 – Limitation of Liability, Y(UK)2, – HGCRA (payment terms), Y(UK)3 – Contracts Act 1999, suitable Z clauses including substitute for X.12
<b>C</b>	Term services contract (TSC)	See supplementary business case for traffic signals contract	

## C5.2 RISK TRANSFER

1. A critical part of any contractual negotiation is the allocation of risk. In general terms, risk should be allocated to the party best able to manage it. Allocating risks to the contractor which it is not well-placed to manage simply results in inflated prices.
2. Major risks are discussed below.

### C 5.2.1 APPROACH TO TRANSFERRING STAFF WHO ARE MEMBERS OR, OR ELIGIBLE TO JOIN, THE LOCAL GOVERNMENT PENSION SCHEME

1. It is not expected that any staff will transfer from the Council to the new contractors.
2. But staff members who are former employees of the Council - and of Norwich City Council - have transferred to May Gurney during the current contract. Those staff members retain a right to be members of the Local Government Pension Scheme (LGPS), or of a scheme certified as 'broadly comparable' by the Government Actuary's Department.
3. The approximate number of staff concerned is as follows.

<b>Ex-County Council staff</b>	<b>Former City Council staff</b>
Some six management and supervisory Some 24 road workers	To be confirmed

4. The general principles relating to pensions provision are set out below.
5. Most contractors may gain admitted body status to the LGPS. This is achieved through executing an Admission Agreement (one per contract) between the Norfolk Pension Fund and the contractor. The Norfolk Pension Fund does not have a separate legal personality from the council, but for the purposes of this business case it is treated as a separate entity. The County Council enters in to the contract in two capacities, as the scheme employer letting the contact and as Administering Authority of the Pension Fund.
6. Adherence to the governing LGPS regulations through the Admission Agreement places potentially onerous risks on the contractor. Because most contractors would consider these commercially unacceptable, and would either decline to bid or charge a considerable premium on the contract price, the council has determined a broad principle that best value for the taxpayer is achieved by the Council indemnifying the contractor against certain of these risks via the contract. This indemnification is outside the contractors' relationship with the Pension Fund and is not reflected in the Admission Agreement.
7. It should be borne in mind that these are not in essence new or additional risks. The Council took on these risks originally, by operating a defined benefit pension scheme, and retained

them by indemnifying May Gurney against certain pension risks. However, as compared to direct provision of services by the Council, the shorter time frame of participation in the fund by the contractor does change the profile of cash flow risk and introduce the risk of a termination payment falling due

8. Risks may crystallise at several points. Firstly, every three years, the actuary revalues the scheme's assets and liabilities (the "triennial valuation") and recalculates the employer contribution rate. This may result in an increase or decrease in the rate, both for council staff and for transferred staff. Secondly, at the point of contract termination (planned or – as for example in the case of insolvency, or termination for breach - unplanned), there is an immediate requirement to make up any shortfall in the fund through a capital payment that is assessed by the Fund Actuary. Thirdly, if all the LGPS members leave the contractor's employment or cease to work on the contract, the admission agreement will terminate and a capital payment may be required.
9. Where staff members transfer to a sub-contractor at contract commencement, risk may crystallise if the sub-contractor's contract is terminated by the prime contractor. Similarly, if the prime contractor enters into a sub-contract during the course of the contract, and all staff who are members of the LGPS scheme transfer to the sub-contractor, the contractor's admission agreement will terminate and it may be necessary to make up the shortfall immediately.
10. The NCC standard allocation of risk for a tendered contract where staff members are contracted out, as per the new draft standard approach, is set out below – with row A being modified to reflect that this is a second generation transfer. It is proposed to adopt this approach in this contract.

		<b>Contractor</b>	<b>ETD</b>
<b>A</b>	<b>Shortfall in fund at time of staff transfer</b>	Carries no risk. The fund will be fully funded at the date of staff transfer	By virtue of the existing contractual arrangement with May Gurney, will need to make up any shortfall in the fund which occurs on termination of the existing contract with May Gurney.
<b>B</b>	<b>Change in employer contribution rate, whether occasioned by investment performance or a change in the rate of ill-health retirement</b>	Carries the risk under the admission agreement.	Indemnifies the contractor against the risk via the contract, but also under the contract takes the benefit of any reduction in contribution rate.
<b>C</b>	<b>Pension strain costs arising from redundancy of a member aged 55 or over at the time of redundancy</b>	Carries risk under both the admission agreement and the contract.	Bears no risk other than when redundancy occurs due to contractor failure and any additional payments due cannot be recovered from the administrator

		<b>Contractor</b>	<b>ETD</b>
<b>D</b>	<b>Shortfall or surplus in the fund on contract cessation.</b>	Carries the risk of a shortfall under the admission agreement, but is indemnified against this through the contract. Does not benefit from any surplus, either under the admission agreement or under the contract.	Indemnifies the contractor against any liability to make good a shortfall on contract termination. Does not benefit directly from any surplus, but the Council in general benefits via the assessment of its total liabilities at each valuation triennial valuation date.

11. The LGPS regulations provide for the awarding authority to consider, having taken actuarial advice whether a bond should be required from the admitted body to cover any risk which might arise from early termination of the contract, in particular as a result of insolvency. The authority must also keep the risks under review over time. These risks include:
  - a. early retirement costs if employees over 55 are made redundant on the early termination of the contract; and
  - b. any deficit in the fund arising from market related risks (asset underperformance and/or a fall in gilt yields).
12. As awarding authority Norfolk's general position is that a bond should not be required but that advice (in the form of calculation of the bond amount) should still be received and reviewed.
13. The view that a bond will not in general offer good value is based on the following premises:
  - a. It is not generally good value to insure for a risk which the authority is able to bear itself. Requiring a bond is a form of insurance, for which the authority will ultimately pay through the contract price.
  - b. The cost of the bond may well be disproportionate.
  - c. Under the risk allocation set out above, the authority is in any case taking the market-related risks (which are largely a cash flow issue).
  - d. Some categories of bidder may find themselves excluded from the bond market that considers they pose too greater risk.
14. Under the risk allocation set out in the table above, the market-related risks are in any case borne by the council, so the protection foregone by not requiring the bond is the risk associated with redundancy costs should the contractor become insolvent and make LGPS members redundant.
15. The figure for market-related risks will be available once the Pensions Information Memorandum is prepared and gives a fair indication of the likely maximum size of cash-flow exposure arising at contract termination.

---

## C 5.2.2 OTHER RISKS

---

### QUALITY RISKS – ROUTINE MAINTENANCE

---

1. This is not intended to be a purely outcome-based contract, for several reasons.
2. Firstly, few of Norfolk's roads are purpose-built. The contractor would be likely to charge a significant risk premium if required to take the risk on maintaining them to a particular condition.
3. Secondly, the Highways Maintenance Efficiency Programme has recognised<sup>6</sup> that there are significant practical issues to resolve before outcome-based specifications can be applied to local government highways contracts.
4. Thirdly, in the current climate, the Highways budget cannot be guaranteed for the length of the contract. This is not compatible with a payment-by-outcomes regime.
5. Accordingly, the general approach taken will be the standard New Engineering Contract (NEC) requirement for the contractor to exercise, in essence, 'reasonable skill and care'. This will be supplemented by key performance indicators, tied to the service credit regime.
6. In some cases, such as gully emptying, a more outcome-based approach may be appropriate.

---

### QUALITY RISK – MAINTENANCE AND IMPROVEMENT SCHEMES

---

1. The general approach taken will be the standard NEC requirement for the contractor to provide the Works in accordance with the Works Information

---

### GROUND AND WEATHER RISK

---

1. The general approach of the NEC Contract is for the employer to take the risk of physical conditions which can be described as not reasonably foreseeable by an experienced contractor and the contract uses the 'compensation events' approach to compensate the contractor. The contract will need to set down the boundaries of the risks between the employer and contractor.
2. An objective measurable approach dealing with weather risk is used in the contract. If weather conditions are more adverse than experienced over a 10 year average period a compensation event will apply. Bearing in mind Norfolk's geography, appropriate measurements and data must be used and for this reason NCC is addressing the issue of locations of weather stations (previously RAF Coltishall & Marham). This issue may need to

---

<sup>6</sup>The Minutes of the HMEP Board of 18 May 2012, at <http://www.dft.gov.uk/hmep/docs/minutes/meeting-120518.pdf>, state: "4.6 The standard specification had generated discussion at DAG. While an outcome specification may deliver the most benefits in the long term, there were issues to resolve before it could be widely adopted by local authorities. Many would be unfamiliar with such a contract, and their networks were very different from the Highways Agency's, which had mostly purpose built roads. Dana Skelley confirmed that the experience in developing the standard contracts in London were that clients would not be able to move to an outcome based contract at the moment.

be 'tidied away' in the dialogue. General approach of the NEC Contract is for the employer to take the risk of physical conditions which can be described as not reasonably foreseeable by an experienced contractor and the contract uses the 'compensation events' approach to compensate the contractor. The contract will need to set down the boundaries of the risks between the employer and contractor.



### C5.3 RISK ALLOCATION MATRIX

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
<b>External</b>						
<b>R1.</b>	Political	Change of administration, cross cutting policy decisions, local government review		•		This is a long-term contractual arrangement and does not permit of significant change of direction without the prospect of significant cost to the council. That said, the contract will contain clauses permitting the novation of the contract to another authority on local government review.
<b>R2.</b>	Economic	Inflation between bid receipt & Contract award			•	Indexation will not kick in until the first anniversary of the contract.
<b>R3.</b>		Inflation after Contract award		•		Indexation will place most of the risk on the authority.
<b>R4.</b>		Changes in Business rates (depots)	•			
<b>R5.</b>		Changes in Utility costs (depots) (e.g. gas/water/sewage/electricity)	• [Co. Hall]		• [Depot]	Bidder to include depot utility costs in bid. Sub-metering needs to be considered where depot use is split between NCC and bidder.
<b>R6.</b>		Changes in Taxation (excl VAT)	•			Option X.2 will be included and change in taxation will be a compensation event (under the rubric of change in law)
<b>R7.</b>		Changes in VAT		•		

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R8.	Technological	The risk that a specified technical solution (eg a road surface, engineering solution or selected material) may not perform as well as expected	•			Unless the designer is negligent (or contractor within ECI), the risk will be with the client. Designer will specify using “reasonable skill and care”, guided by our laboratory and contractor at ECI
R9.	Legal/regulatory	Obtaining Planning permission [work sites]			•	
R10.		Obtaining planning permission [schemes]	•			
R11.		Statutory consents [work sites]			•	
R12.		Statutory consents [schemes]	•			
R13.		Compliance with Health & Safety legislation		•		Council has Construction, Design and Management Regulations (2007) (CDM) responsibility as client; consultant as designer; contractor as principal contractor
R14.		Compliance with other legislation		•		
R15.	Environmental	Environmental liabilities/risks		•		
R16.		Finds at Authority Sites	•			
R17.		Ground conditions at Authority Sites		•		
R18.		Contamination at Authority Sites		•		To be considered at dialogue

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
<b>Operational</b>						
R19.	Failure to accurately specify/capture a clear requirement	The risk that NCC's requirement may be unclear, resulting in rework at NCC's expense.		•		We need to place some onus on contractors to challenge unclear briefs and orders. Assuming that is the case then the risk will be shared.
R20.	Inadequate Contractor's Proposals/method statements	The risk that a contractor's method statements may not be adequate to delivery of the task, resulting in poor outcomes.		•		We will be reviewing method statements as part of tender evaluation, so will be accepting the final versions as part of the contract.  Where target costing is used a delay or rework caused by the error of one party is a shared risk (unless that party was negligent)
R21.	Construction risk	Risk of construction delay or excess cost.		•		Normal NEC3 terms apply. ECC Terms need to be written into the TSC as appropriate. Target cost applies to most construction schemes.
R22.	Maintenance risk	The risk of unexpectedly high maintenance costs	•			See R8. There will be a maintenance period covering the first twelve months after construction, which will be the contractor's responsibility.
R23.	Replacement/renewal risk	The risk of higher replacement costs owing to unexpectedly high usage	•			
R24.	Wear & tear (over-utilisation of asset)	The risk of higher maintenance costs owing to unexpectedly high usage	•			
R25.	Delay in getting access to Site		•			
R26.	Latent defects (of new assets)				•	

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R27.	Condition of Authority Sites - Latent defects			•		
R28.	Not used					
R29.	Acceptance/demonstration			•		Contract drafting will need to reflect need for appropriate supervision by NCC.
R30.	Throughput/volume risk	The risk that the contractor will get less work than it expected			•	
R31.	Third Party Revenue (S.278)	The opportunity to generate profit through being paid to undertake schemes on behalf of bidders		•		
R32.	Design	The risk that a design is not fit for purpose, or entails excessive build cost.		•		<p>Excess build cost is a shared risk under the target cost regime. Client and contractor engage with the designer under ECI to agree the target cost.</p> <p>Outstanding issue. PSC wording will need to be modified to place liability on the designer for re-work entailed through poor design.</p> <p>A design which is definitively not fit for purpose would be covered by professional indemnity.</p>
R32a	Design	The risk that the designer will continue to design a scheme (and clock up fees) when it should have been evident that the construction cost was unaffordable.			•	Needs to be managed by regularly updating project cost forecast (early warning)

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R32b	Design	The risk that the designer's cost exceeds the fee estimate, without early warning.			•	Too many variables for fixed price to be practical in most cases. Regular updates of costs against fee estimate required (early warning). Target cost may be appropriate for some contracts.
R33.	Integration risk (employer/designer/works/signals/streetlights/ other)	Risk of rework, poor performance or excessive cost owing to poor coordination between the parties		•		Need a KPI to incentivise shared working. Streetlighting PFI is an extant contract but may be possible to agree protocols to minimised conflict.
R34.	Failure to deliver services to agreed standards	Failure to meet Key Performance Indicators	• [Reputation]		• [Reputation & service credits]	
R35.	Failure to build to design or on time			•		Target cost applies to significant schemes. Delay damages apply on a task-order by task-order basis. <i>Need to consider how this will be dealt with in the dialogue to enable pricing without excessive risk premium.</i>
R36.	Poor performance monitoring and management regime/mechanism	The performance regime not delivering high performance, because it measures the wrong things, does not have sufficient incentives associated with it or is ambiguous.  Ambiguity in the performance regime leading to disputes or acrimony.	•		•	Will be a particular focus of the competitive dialogue.

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R37.	Construction costs	The risk that the cost of construction will be higher than expected		•		Target cost applies to most construction work. NCC however bears risk of inflation
R38.	Operating costs	The risk of higher-than-expected operating costs	•			This is only an issue for the traffic signals contract which is covered in a separate OBC
R39.	Benchmarked/Market Tested costs (at agreed points)	The risk that prices may be adjusted to reflect benchmarking or market testing, to the disbenefit of one or other party.		•		<i>Position to be confirmed</i>
R40.	Residual value	The risk that assets used in the delivery of the contract may depreciate more than expected			•	
R41.	Provision of free-issue equipment/assets	The provision of 'free issue' equipment	Not applicable			None planned
R42.	Disposal of surplus Existing Assets	The risk that it may be difficult to dispose of existing assets used for service delivery at their book value				A risk associated with the existing in-house service.
R43.	Condition of assets on expiry/termination	The risk that the highway asset may be in a worse state than expected on termination	•			
R44.	Authority damage to assets (e.g. misuse, vandalism, theft, accidental damage)	The risk that assets may be damaged and irrecoverable losses suffered as a result	•			
R45.	Existing Contracts (aligning/terminating)	The risk associated with having to extend existing contracts if the procurement process is delayed.	•			

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R46.	TUPE transfer of Authority Employees		Not applicable			
R47.	TUPE transfer of 3rd Party Employees	The risks associated with TUPE transfer of the existing contractor's employees to the new contractor.			•	
R48.	Employee risk (costs/redundancy/pension strain cost etc.)	The risks associated with employee wage inflation, making employees redundant, and the need to 'top up' the local government pension scheme if employees aged 55 or over are made redundant.		•		Mainly on bidder but NCC takes wage inflation risk (up to the level of general inflation in the industry ) via indexation.
R49.	Local government pension scheme risk	Fund shortfall at contract start: the risk that the 'pot' which must be made available to the new contractor will be inadequate.	•			The risk is on May Gurney under the pension scheme rules but the council has indemnified them against this risk under the terms of the existing contract.
R50.	Local government pension scheme risk	Fund shortfall at contract end: the risk that, due to inadequate investment performance or increased projections of longevity, the fund will be inadequate at contract termination or expiry or upon bankruptcy of the contractor.	•			The risk (except in case of bankruptcy) is on the contractor, but indemnified under the contract. If the contractor becomes insolvent and employees over 55 are made redundant, they become eligible for immediate payment of their pensions and the council will be liable for pension strain costs.
R51.	Local government pension scheme risk	Change in employer contribution rate	•			

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R52.	Contractor and Sub-contractor resource availability	The risk that the contractor will have to pay more to bring in resources to handle demand or that specialist will not be available.			•	<i>To be confirmed</i>
R53.	Financing	Risk associated with the availability and cost of capital to fund works.	•			
R54.	Intellectual Property Rights (IPR)	Ownership of rights in design	•			<i>To be confirmed</i>
R55.	Visibility/granularity of baseline costs for pricing change	The risk that costs will not be sufficiently granular to allow them to be challenged and any disputes resolved.		•		Open book will be required for target cost projects
R56.	Measures in a Crisis	Widespread flooding, exceptionally severe winter etc requiring the diversion of contractor resources, at the Council's direction, to help resolve the crisis.		•		Contractor takes the risk that his idle staff (e.g. in snow or generalised flooding) may <u>not</u> be utilised and paid for by the council (except to the extent that weather risk is a compensation event). Council has the right to require that resources be diverted to help in emergencies but this will be a compensation event.



Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R57.	Contractor Default	Risk that the contractor becomes insolvent or otherwise defaults on the contract.		•		<p>Council will require parent company guarantees where the contractor is a subsidiary, but this will not protect against insolvency of the ultimate parent.</p> <p>In extremis, the contractor may, short of insolvency, default on the contract if it feels that the implications of doing so are less than the implications of continuing. The council would launch proceedings but these might be protracted and difficult.</p>
R58.	Authority Default	Risk that the council defaults on the contract.		•		If the council defaulted, the contractor would pursue it through the courts or arbitration.
R59.	Authority Voluntary Termination	The effect of the council terminating the contract early for a reason other than contractor default.		•		Termination on local government reorganisation will be catered for in the contract. Otherwise, there will be no provision for termination at will, but from year 5, the contract is effectively terminable by the council on two years' notice. See section C5.5 for further discussion.
R60.	Compensation Event		•		•	Depends on who causes/initiates the event
R61.	Force Majeure	The risk that work is delayed or prevented through an event outside the control of either party – eg a lightning strike causing severe damage to the works		•		NEC3 takes a fairly narrow view of 'force majeure'. If an event occurs which meets this narrow definition (Clause 19.1), it will constitute a compensation event (Clause 60).

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R62.	Financial robustness of Consortia/Contractor	The risk that the contractor runs into cash flow difficulties or becomes insolvent.		•		<i>Approach to be confirmed</i>
R63.	Contractor warranties & undertakings	The risk (to the contractor) that the council calls on the warranties it has given			•	<i>Position on warranties to be confirmed</i>
R64.	Change of Contractor	The risk that the ownership of the contractor will change.	•			Council will not have power of veto over the contractor changing hands
R65.	Authority disclosed data	The risk that the contractor bases its pricing or any performance guarantee on data provided by the council which later proves to be inaccurate.			•	In general, the Council will not warrant the data that it provides to bidders.
R66.	Contractor's Indemnities				•	Under Clause 83 the Contractor indemnifies the Employer for all risks other than the Employer's risks detailed at Clause 80.

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R67.	Insurance	The risk that an event causing losses proves not to have been adequately insured.		•		<p>The works contractor is to be responsible for the provision of insurance cover whilst carrying out work (whilst in possession of the site). The authority is responsible at all other times.</p> <p>The works contractor will be required to have professional indemnity insurance covering advice given as part of early contractor involvement.</p> <p>The professional services consultant will be required to have professional indemnity insurance covering, for example, errors in design.</p> <p>A table of insurances is at table C6.</p>
R68.	General Uninsurability	The situation where a risk required to be insured against (i.e. a risk covered by a required insurance or statutory insurance) and which was previously insurable becomes uninsurable. In this context uninsurability includes both unavailability of insurance for a particular risk, or premiums being charged at a level which is not commercially viable.			•	<i>Position to be confirmed</i>

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
R69.	User satisfaction	The risk that users (the general public) are dissatisfied with the services delivered by the contract.		•		
R70.	Relationships between NCC/Contractor	The risk that relationships between NCC and its contractors deteriorate		•		
R71.	NCC procurement and contract management skills	The risk that the procurement or subsequent contract management do not deliver value for money	•			
R72.	Effective Governance	The risk that lack of effective governance across all the parties leads to poor performance, reputational damage or excessive cost.		•		
R73.	Appropriate leadership and engagement at senior levels in all parties	The risk that there will be insufficient senior attention paid to the contract.		•		
R74.	Market (number of contractors and level of interest)	The risk that there will be insufficient market interest in the tender and that there will therefore be a lack of competitive pressure	•			
R75.	Contractor/bidder track record – are they credible (partnering behaviours)	The risk that the chosen contractor acts in an adversarial fashion once appointed.	•			
R76.	Value for money	The risk that the council will not achieve overall value for money.	•			

Series	Risk Title	Risk Description	NCC	Shared	Bidder	Remarks
<b>Change</b>						
<b>R77.</b>	Change of requirement and/or solution	Authority initiated Change not necessary to comply with Change in Law	•			Compensation event
<b>R78.</b>		Contractor initiated Change not necessary to comply with Change in Law			•	Compensation event
<b>R79.</b>		Jointly initiated Change not necessary to comply with Change in Law		•		By negotiation
<b>R80.</b>	Change in Law	A change in law (including but by no means limited to a change in taxation) may affect the contract price (upwards or downwards). Change necessary to comply with Qualifying/Discriminatory Change in Law	•		•	<p>NEC3 makes no distinction between general and discriminatory change in law. Any change in law is a compensation event, if the X.2 option is taken.</p> <p>We will adopt X.2 as otherwise we will be paying a risk premium, but will carve out any change in law already covered by indexation (to avoid paying twice).</p>

---

## C5.4 PAYMENT MECHANISMS

1. Three NEC standard payment options (A, C and E) are available in both the Term Service Contract and the Professional Services Contract. These will be applied according to the value and complexity of the project (or task) that the provider is asked to complete by the client. These options enable the risk apportionment to be appropriately applied and recognised for various projects.

### **A - Priced contract with activity schedule**

- a. This is a priced contract with the risk of carrying out the work at the agreed prices being largely borne by the Contractor/Consultant. The contractor prices a project from information supplied by the employer and undertakes to deliver the project for that price

### **C - Target contract with activity schedule**

- b. This is a target cost contract in which the out-turn financial risks are shared between the Client and the Contractor/Consultant in agreed proportion. The contractor produces a price for a project using the tendered activity schedule. If the project is completed better than the target cost the saving is shared in accordance with the mechanism within the contract; the liability is also shared should the contract exceed the target cost.

### **E - Cost reimbursable contract**

- c. This is a cost reimbursable type of contract, 'generally used when the basis and details of the works required are difficult to define sufficiently for a more detailed pricing arrangement to be used, with the financial risk being largely taken by the Client. The supplier is reimbursed for the cost of the project based upon the tendered hourly rates.

---

## C5.5 INCENTIVES, TERM AND ONGOING VALUE FOR MONEY

1. These will be long-term contracts and it will be important to maintain value-for-money over the term.

- Operational KPIs will be incentivised by means of service credit regime (i.e. financial incentive)
- Contract length will be determined by reference to strategic KPIs (one of which is likely to be an agglomeration of the operational KPIs)

By achieving operational KPIs to the required targets, providers will avoid the application of service credits.

2. The principal incentives for the contractors are:

- a. The opportunity to gain contract length (or avoid a reduction) (see paragraph C 5.5.1 below).
- b. A service credit regime (which penalises poor performance financially).
- c. Gain share available from the target costing process (when the the financial out turn of projects is lower than the agreed estimate and the benefit is shared between the provider and the client).
- d. The application of delay damages on a task-order by task-order basis.

---

#### C 5.5.1 CONTRACT LENGTH

1. There will be two layers of key performance indicators (KPIs) – strategic and operational.
2. The initial length of the works and professional services contracts will be seven years. Based on achievement of the strategic KPIs, the contract may be extended up to ten years – though no guarantee will be offered.
3. In light of the length of the procurement process, a decision will be needed about whether to exercise the first year’s extension by the end of Year 5. Further decisions will then need to be taken yearly thereafter (so that, in effect, the contractor will be on two years’ notice).
4. The contractor will be required to accept contract extensions up to the ten-year point.
5. The contract will contain a provision for the contract to be extended by up to a further two years, but only by mutual consent. A decision on whether to exercise this option would need to be taken by the end of Year 8.
6. Any failure by the contractor to achieve strategic KPIs will result in an option for the Council to shorten the contract down to a minimum of five years.
7. Re-procurement timescales would require a decision by the end of Year 3. A formal early warning notice would need to be served no later than the 2½ year point.
8. An option to terminate the contract at will would undermine the incentive mechanism set out above and would be likely to impact on price and/or market appetite, so none will be included. However, an option to terminate in the event of local government review will be included.
9. As with any contract, the contracts can obviously be terminated by mutual consent.

### **Contract Performance Management Framework**

1. It is proposed that these contracts will be managed through performance indicators at 3 levels:

#### *Failure to Deliver*

- a. These measures capture instances where works are either not completed on time or are reported as complete but found to require a return visit to site to correct defective works. Payments to the contractor will be reduced by an amount that reflects the cost to the Council of any such failures; this might be in terms of officer time dealing with complaints or the need to bring in additional resources.

#### *Operational Performance*

- b. These measures are used to assess the level of service delivery across a range of aspects. Where performance falls below target payments to the Contractor will be reduced through a cut in their fee (representing the level of profitability).

#### *Strategic Objectives*

- c. These measures are designed to assess the contractor's contribution to the Employer's high level objectives for the service. The strategic indicators will be used as a guide to the appropriateness of a contract extension or a shortening of the contract term.

---

<sup>7</sup> this will help to enhance performance management arrangements as per the endorsed contract option F2+ from Cabinet report 05 March 2012



## C6 MAJOR CONTRACTUAL CONDITIONS

1. Significant contractual conditions are summarised below.

T1.	Applicable law/jurisdiction	Law of England & Wales
T2.	Assets	Depot space will be made available free of charge to contractors where they so request in the dialogue. Where contractors take advantage of this approach, the opportunity cost to the council will be factored into the financial evaluation for contract award. Depot space occupied by the contractor beyond that required for delivery of the Council's contract will be charged at normal commercial rent.
T3.	Assignment /transfer	We should assume that local government restructuring may occur during the life of the contract. Council may transfer mutatis mutandis to any contracting authority. Contractor may assign only with Council's agreement.
T4.	Audits /benchmarking/best value	These issues are dealt with by clause <i>Z.7 Details to be confirmed</i>
T5.	Business continuity/disaster recovery	Contractors will be required to have robust business continuity and disaster recovery arrangements in place.
T6.	Change management	A change control procedure will be put in place, allowing changes within the scope of the contract.
T7.	Communications and reporting	Standard NEC3 processes for noticing will be deployed. It should be noted that these place rigorous requirements for the submission of communications in writing through a central point.
T8.	Confidential information/non disclosure	In light of the government's increasing requirement that councils be transparent about their commercial dealings, the contract itself (less any particularly sensitive commercial aspects), payments, and performance against KPIs will be public.

T9.	Contracts (Rights of Third Parties) Act 1998, use of contract by third parties	The Contracts (Rights of Third Parties) Act will be disapplied, except that transferred workers will be able to enforce their pension rights directly against the contractor. Suitable arrangements will be made for authorities delivering highways functions under agency arrangements to access the contract.
T10.	Cost transparency & build-up	Lack of full cost transparency has been an issue on the current contract, so our requirements for a transparent cost build-up for target-costed projects will be set out more fully in the new contract and subjected to dialogue.
T11.	Data protection/security	Standard data protection clauses will be included. Data protection is less central to this contract than to some council contracts, such as social care, but must still be covered off carefully.
T12.	Delivery/acceptance	Suitable drafting regarding contract supervision will need to be included.  <i>Position concerning transfer of site 'ownership' for insurance purposes to be confirmed.</i>
T13.	Dispute resolution	Generally will follow NEC standard approach, i.e. adjudication then tribunal. The 'tribunal' will be arbitration rather than the courts.  <i>Position re including a mediation stage before the tribunal to be confirmed.</i>

T14.	Exclusivity	<p><i>Degree of exclusivity offered in the professional services contract to be confirmed.</i></p> <p>In respect of the works construction contract, Clause Z.2 carves out from the exclusivity clause (a) works over £250,000; and (b) a small proportion of other work put out for benchmarking purposes. Some other work will also need to be carved out – notably higher-value but routine work such as surfacing. <i>Details to be confirmed.</i></p> <p>Clause Z.3 carves out from exclusivity work which the contractor cannot undertake because it is too urgent or specialist, and work which is funded by a third party who requires that it be competitively tendered.</p>
T15.	Indexation and price change	<p>The contract will be subject to indexation, based on the BCIS<sup>8</sup> Price Adjustment Formulae Indices (Highway Maintenance) 2010 Series.</p> <p>For the professional services contract, the index used will be BCIS WC10/3 (professional services).</p> <p>For the highway works contract, the index will be built up using the resource cost indices from the HTMI which will be weighted as applicable to each of the Method of Measurement Highway Works series.</p> <p>Prices will be adjusted annually to take account of indexation.</p>
T16.	Information access and management	<p>Clause 92.2 covers rights to data on contract termination (including termination through contractor insolvency)</p>
T17.	Insurance	<p><i>To be finalised</i></p>

---

<sup>8</sup> BCIS is the Building Cost Information Service of the Royal Institute of Chartered Surveyors

T18.	Intellectual property	<i>Intellectual property Rights position to be confirmed.</i> Clause 92 provides for the information to pass to the Employer on termination, including through insolvency.
T19.	Invoices/payment/late payment	The provisions of the Housing Grants, Construction and Regeneration Act 1996 will apply to most, if not all, work under the contracts.  Obligations for prompt payment will follow down from the prime to the sub-contractors using standard government clauses.  The use of project bank accounts to accelerate supply chain payment will be discussed with the bidders.
T20.	Indemnification/Limitation of liability	Limitation proposed for professional services
T21.	Liquidated damages	<i>Exact approach to be confirmed.</i>
T22.	Performance/guarantees/undertakings	Performance will largely be driven by KPIs and service credits.  A parent company guarantee will be required by virtue of option X.4.
T23.	Responsibilities of the parties	The dialogue process will include a workstream about processes, interaction and governance which will work through these issues.
T24.	Scope and goals	The scope of the contracts will be set out in the service information. A common goal (or set of objectives) will be set out in the partnering arrangements.
T25.	Service levels and warranties	<i>Position regarding warranties to be confirmed</i>
T26.	Step-in	Clause 92 provides for step-in rights on insolvency.
T27.	Term and termination	See section C5.5

T28.	Transition and service commencement	The Service Information will include provisions for mobilisation and transition, including: works which span the commencement date; works designed by the outgoing designer and implemented by the new contractor; early contractor involvement before the service commencement date]
T29.	TUPE and pensions	Pension provisions are discussed in detail in the risk allocation section above.
T30.	Working with others – utilities etc.	Clause Z.8 provides for contract governance arrangements including a Partnership Board. General NEC requirements cover working with others, including utilities, the salt and street lighting PFIs, and utilities.

## C7 SUSTAINABILITY REQUIREMENTS

1. The first two columns of the following table are drawn from *BS8902:2009, Annex 1, Table 1*, with the exception of the first row, and of the row relating to equality, which has been modified to reflect the protected characteristics in the Equality Act 2010.
2. Cross-references to the headings use in the Civil Engineering, Environmental, Quality, Assessment and Award (CEEQUAL) scheme<sup>9</sup> in italics

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/ contract management
S1.	<b>General</b>	Overall approach to environmental management and sustainability. <i>Project management/ contract management</i>	Highly significant. An integrated overall approach is required.	Must have ISO14001 or equivalent		CEEQUAL for term maintenance contracts to apply. Council and contractors to agree and work to a contract environmental management plan.
S2.	<b>Environmental</b>	Recyclability and recycled content <i>Material use</i>	Highly significant. Use of recycled material has a significant impact on aggregate extraction, vehicle movements and embedded carbon.			Where appropriate, BES6001 or equivalent to apply to products.

<sup>9</sup> CEEQUAL Version 4.1:Assessment Manual for Term Contracts: Part 1: Maintenance (for use in the UK & Ireland), Rev 1, December 2011

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S3.		Renewability <i>Material use</i>	Of some significance. Highway maintenance and schemes are likely to involve use of timber, which should be from sustainable sources.			All timber to be either “legal and sustainable”, Forest Law Enforcement, Governance and Trade (FLEGT) licensed or recycled <sup>10</sup>
S4.		Harvesting or extraction impacts <i>Material use</i>	Highly significant. Highway maintenance involves significant use of aggregates and oil-based products.			Where appropriate, BES6001 or equivalent to apply to products.

<sup>10</sup> See <http://www.cpet.org.uk/files/TPAN%20April%2010.pdf>

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S5.		Greenhouse gas emissions Energy usage <i>Energy and carbon</i>	Highly significant. Includes embodied carbon in products, including aggregates, coated products, cement product and steel; transport emissions; site energy use; energy use at depots and offices.  The Local Enterprise Partnership (LEP) has published a <i>Green Economy Pathfinder Manifesto</i>		Assess contractors' proposals to measure & minimise impact as part of award	Contract terms to include best practice around driver training, site operation etc and to encourage innovative approach to carbon savings.
S6.		Transport impacts <i>Transport</i>	Significant. Large number of heavy vehicle movements. Significant workforce travel.	Track record, prosecutions	Assess contractors' proposals to measure & minimise impact as part of award	Track and manage



	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S7.		Water usage <i>Water resources &amp; the water environment</i>	Water usage not very significant.	Consultant will need Sustainable Urban Drainage Systems (SUDS) skills	Contractor may need to maintain drainage to a greater extent than previously due to SUDS so will need to test capability. Consultants' approach to providing expertise on this contract	
S8.		Biodiversity <i>Ecology &amp; biodiversity</i>		Track record, expertise, prosecutions	Consultants' approach to providing expertise on this contract	Contract terms to require appropriate environmental protection
S9.		Eco toxicity <i>Ecology &amp; biodiversity</i>	Significant. Risk from contamination of drainage outfalls, disposal of tar-based products.	Track record, expertise, prosecutions		
S10.		Land remediation <i>Land use</i> <i>Landscape</i>	Of some significance re Brownfield sites, e.g. Great Yarmouth Enterprise Zone	Track record, expertise,	Consultants' approach to providing expertise on this contract	Largely dealt with scheme-by-scheme

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S11.		Waste management <i>Waste management</i>	Highly significant. Re-use and recycling of materials. Legislative requirements-transport of waste, site waste management plans	Track record, expertise, prosecutions	Assess contractors' proposals to measure & minimise impact as part of award	Scheme planning/interaction between schemes.
S12.	Social	Workers' conditions Safe and healthy working conditions	Highly significant. Highways work is potentially hazardous.	Must have BS OHSAS 18001 (Occupational Health and Safety) or equivalent system.  Track record, prosecutions.  PAS91 (Construction related procurement – pre-qualification questionnaires).	Method statements for high risk activities to be approved as part of award process	BS OHSAS 18001 or equivalent  KPI re: Reporting of Injuries , Diseases and Dangerous Occurrences Regulations (RIDDOR), Accident incident rate/accident frequency rate
S13.		Slave labour Child labour	Of some significance, insofar as delivery may involve textiles (e.g. overalls), stone and other goods imported from developing countries.			Contract term – reasonable endeavours. Encourage contractor to make use of suitable industry monitoring schemes.

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S14.		Fair wages	Some risk in bottom tiers of supply chain			Contract term – reasonable endeavours re sub-contractors
S15.		Working hours and holidays	Some risk in bottom tiers of supply chain			Contract term – reasonable endeavours re sub-contractors
S16.		Freedom to join trade unions (freedom of association)	Not a significant issue. The vast majority of the work will be undertaken in the UK, where the right to join, or not to join, a trade union is dealt with by statute.	Not applicable		

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S17.		<p>Equality in respect of:</p> <ul style="list-style-type: none"> <li>- Age</li> <li>- Disability</li> <li>- Gender reassignment</li> <li>- Marriage and civil partnership</li> <li>- Pregnancy and maternity</li> <li>- Race</li> <li>- Religion and belief</li> <li>- Sex</li> <li>- Sexual orientation</li> </ul>	<p>Significant. Reputational and legal impact. The council must have due regard to the need to:</p> <ul style="list-style-type: none"> <li>- Eliminate unlawful discrimination, harassment and victimisation</li> <li>- Advance equality of opportunity between different groups</li> <li>- Foster good relations between different groups.</li> </ul> <p>In practice, the main issues are:</p> <ul style="list-style-type: none"> <li>- workforce equality;</li> <li>- design of schemes;</li> <li>- the interface between the contractor and the public.</li> </ul>	<p>Track record, prosecutions</p> <p>Capability (consultants' design skills)</p>	<p>Consultants' approach to providing expertise on this contract – innovation in 'design for equality', value for money of accessible designs</p>	<p>Management of workforce – public complaints etc.</p> <p>Innovation mechanisms.</p> <p>Design standards – textured pavements, kerb heights, etc.</p>

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S18.		Complaints and prosecutions	Significant. Reputational issues	Track record and prosecutions		Contract management, complaints handling processes
S19.		Skills and training <i>Project management</i> <i>Contract management</i>	Highly significant. Members wish to promote apprenticeships and invest in the local community to drive economic development.  Particular issues at present – want to make investment in skills in readiness for the upturn. Overall county council apprenticeship strategy.		Willingness to take apprentices and promote apprenticeships an evaluation criterion.  Willingness to offer a stable supply chain which can itself offer apprenticeships.  Willingness to promote the sector in schools and colleges	KPIs re sustained delivery of apprenticeships by contractor and first tier subcontractors– completion rates.
S20.		Community relations <i>Effects on neighbours</i> <i>Relations with the local community &amp; other stakeholders</i>	Significant. Noise, disruption, dust, communication.	Track record, references	Proposals for building and maintaining good community relations	KPIs and contract management

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S21.	Economic	Contribution to the built environment <i>Historic environment</i>	Significant. Designers and contractors will need to be sensitive to the historic environment. Reputational issues and tourist industry	Track record, references	Consultants' approach to providing expertise on this contract. Contractors' approach to works management	Scheme-by-scheme management
S22.		Ethical business practice		Track record, prosecutions		
S23.		Contribution to diversity and stability of the local economy	Highly significant. Members wish to invest in the local community to drive economic development. Particular issues at present – want to make investment in skills in readiness for the upturn.		Willingness to offer a stable supply chain.  Willingness to develop local suppliers and participate in county council supply chain development initiatives.  Willingness to work with local chamber of commerce, Federation of Small Businesses (FSB)	

	Field	Issue	Applicability	Treatment in the procurement process		
				Selection	Award	Contract terms/specification/contract management
S24.		Project Bank Account and defined payment terms	Supporting SMEs to maintain regular payments and steady cash flow	Track record, references		Will be specified in terms and conditions
S25.		Long-term financial viability	Reputational and service continuity implications – cf Connaught & Fountains	Financial stability	Can exclude abnormally low tenders	
S26.		Life Cycle Assessments	Significant.	Track record, case studies	Consultants' and contractor's approach to providing expertise on this contract.	Asset management planning by client side. Scheme-by-scheme whole-life-costing/ value engineering.
S27.	<b>Other Issues</b>	Climate change adaptation	Significant. a) Vulnerability to sea-level rise; b) Recently imposed duties – Sustainable Urban Drainage Systems (SUDS) c) Likelihood of further duties over life of contract.		Consultants' and contractor's approach to providing expertise on this contract.	Contractual duty to cooperate, share information/experience, etc.

## C8 ADVERTISEMENT

1. The procurement will be advertised, as required by law, in the supplement to the Official Journal of the European Union (OJEU). In light of the positive reaction to the Prior Information Notice, advertisement elsewhere (e.g. in the trade press) is not considered necessary.
2. A draft of the notices is at Annex B.

## C9 EVALUATION CRITERIA

### C9.1 INTRODUCTION

1. The evaluation criteria used in the procurement will largely determine the outcome. The criteria, once formally communicated to the bidders after publication of the OJEU contract notice, cannot be changed.
2. The selection criteria will be used to arrive at a shortlist of six bidders. The award criteria will then be applied once to reduce the number of bidders to three, and again to arrive at the final award decision.
3. The high level criteria are set out below. The weightings used for the award criteria may be varied somewhat between the two 'award' rounds (i.e. the round used to get down to three bidders, and the final award round).
4. Price may not be used as a criterion for the selection stage. We do not intend to use it as part of the reduction from six bidders to three.

*[Note: The tables below to be updated after programme board discussion and before ETD O&S meeting, but could not be updated in time for the pre-agenda meeting.]*

### C9.2 SELECTION

<b>Selection criteria</b>	<b>Individual weighting within total marks</b>
Experience of highways maintenance	19%
Efficiencies, Savings and Continual Improvement	14%
Integrated Service Management Systems	8%
Transition and service continuity at the start and completion of a contract, including TUPE transfers	8%
Business continuity during the course of the contract	4%
Supply Chain Management	14%
Performance management	14%



Sustainability including environment matters, apprenticeships and economic development	11%
Change management	8%
<b>Total</b>	<b>100%</b>

### C9.3 AWARD

<b>Award Criteria</b>	<b>Individual weighting within total marks</b>	<b>Minimum acceptable score on this criterion</b>
Service Delivery	20%	
Performance Management, Innovation and Continuous Improvement	14%	
Systems, Processes and leadership	14%	
Sustainability including Environmental Management, Apprenticeships and economic development	7%	
Mobilisation/Transition	PASS/FAIL	
<b>Total for Quality</b>	<b>55%</b>	<b>55%</b>
Price and Value for Money	55%	
<b>Total</b>	<b>100%</b>	

### C10 CONTRACT MANAGEMENT ARRANGEMENTS

1. Overall management of the partnership will be governed by a Partnership Management Board, chaired by the cabinet member for Planning and Transportation, with a membership comprising other relevant elected members, senior officers and senior managers from all the partner providers. The work of the Board will be underpinned by a Partnership Management Group chaired by the Head of the Highway Service, the Environment, Transport & Development Executive Management Team and the service management teams. The partners will also be expected to be involved in monthly meetings to manage delivery of the capital programme and the revenue programmes and budget.

2. Day to day management of the contract will be led by a contract manager, supported by commercial and contractual expertise from within the county council; project managers for each individual scheme, from both the county council and the professional services provider and site supervision and auditing by the county council which will be supplemented by the works service provider.
3. Key performance indicators, linked to contract duration and payments will be a key feature of contract management. There will be an expectation that all partners will proactively contribute to a programme of efficiency improvement and initiatives. This will be managed by a cross partnership group who will determine which initiatives should be taken forward, will monitor the savings and will confirm the appropriate level of award in line with the conditions of contract.

## D FINANCIAL CASE

### D1 FINANCIAL EXPENDITURE

1. The current spend for professional services for 2011/12, including advisory and design services – and technical services totals £2.644m on both capital and revenue schemes. The current spend on highway construction, maintenance and repair totals £39m. This spend does not take into account significant expenditure that can be attributed to major projects or specialist works.
2. The key areas of spend for Highways construction, maintenance and repair, as per 2011/12 are as follows:

#### Capital

<b>Project Type</b>	<b>£'000</b>
Surface Dressing	10,714
Carriageway Resurfacing	9,778
Other Schemes, Future Fees and Carry over costs	1,623
Structural Maintenance	1,325
Local Road Schemes	1,194
Bridge Strengthening/Bridge Maintenance	950
Traffic Management ,Road Improvements & Safety Schemes	662
Bus Priority	564
Pedestrian and Cycling Improvements	498
Drainage	290
Walking Schemes	245
Safer & Healthier Journeys to School	162
Other Safety Schemes	107
Haunching	83
Other areas	67
Road CrOssings	66
<b>Grand Total</b>	<b>28,328</b>

#### **Revenue**

<b>Works heading</b>	<b>£'000</b>
Patching Carriageway	2,184
Intelligent Transport Systems Asset Network Management	1,131

<b>Works heading</b>	<b>£'000</b>
Bridges	1,085
Rechargeable schemes	966
Gully emptying	938
Grass Cutting	871
Patching Footway	786
Road Markings	608
Initiatives	379
Drainage Cleaning- Rodding/Jetting	298
Goods & Services	222
Vehicle Reactive Signs Implementation	213
Surveys – Pavements	208
Weed Control	177
City fees	159
Repairs - Footways, Kerbs	133
Utility Trench and Cover Repairs	86
Repairs - Pot Holes	84
Vehicle Reactive Signs Risk analysis-design	83
Verges, Hedges, trees	81
Safety Barriers	78
Drainage repairs	61
Vehicle Reactive Signs Inspections	23
Road Studs	7
Sanding roads - bleeding tar	5
<b>Grand Total</b>	<b>10,867</b>

3. The above should be treated as indicative spend. The overall spend will depend on available funding, which will include funding from the County Council and any external funding.

## D2 OVERALL AFFORDABILITY AND BALANCE SHEET TREATMENT

1. If the contractor chooses to enter in to an admission agreement with the Local Government Pension Scheme, then through its contractual terms the County Council is underwriting the risk of variation in the employer contribution rate and any termination payment to the pension scheme that may arise at the end of the contract/admission agreement. Although

this indemnification is outside the contractors' direct relationship with the Pension Fund, it may allow the contractor to treat the pension obligations in respect of its Local Government Pension Scheme (LGPS) participation as defined contribution in substance and therefore mitigate the balance sheet disclosure of pension liabilities. Contractors will need to satisfy themselves that this accounting approach is appropriate and acceptable to their external auditors. The agreed employer contribution rate and additional pension costs that may arise in certain redundancy situations remain the responsibility of the contractor

2. Overall affordability will be based on the funding available to the County Council such as government funding and external funding.
3. A financial model will be developed to evaluate the affordability of the contract which will be based around a representative programme covering both capital and revenue schemes.

The contract will need to be reviewed against IFRIC 12 – Service Concession Arrangements, IFRIC 4 – Determining whether an arrangement contains a lease and IAS 17 – Leases, to determine the balance sheet treatment of the contract, although no significant issues are expected to arise.

## E MANAGEMENT CASE

### E1 PROJECT MANAGEMENT ARRANGEMENTS

#### E1.1 CABINET APPROVAL AND SCRUTINY

1. The project is subject to the approval, at key moments, of Cabinet and this Outline Business Case will be submitted with the Cabinet paper seeking approval to place the OJEU notices.
2. The sequence of Cabinet approvals up until placement of the OJEU notices is as follows:

<b>Date of Cabinet meeting</b>	<b>Approval given/sought</b>
Cabinet (5 March 2012) - ETD Highways Re-procurement	Cabinet agreed that the project team continues to pursue Contract Option F2+ (as existing with enhanced performance management) as recommended by the Procurement Board and endorsed by Overview and Scrutiny Panel and Norwich Highways Agency Committee (NHAC).
Cabinet (11 June 2012) - Procurement of ETD Highways and Related Services from 2014	Cabinet approved the key milestones within the procurement programme.  Cabinet agreed that decisions other than approval of the Official Journal of the European Union (OJEU) notice(s) and contract award are delegated to the Director of Environment, Transport and Development in consultation with the Cross-Party Member Board and the Head of Procurement.
Cabinet December 2012	Approve placement of the OJEU notice and appropriate delegations

3. The project is subject to scrutiny by the Environment, Transport and Development scrutiny panel.
4. Approval to award the Works contract will be sought from Cabinet, the target date being August or September 2013. It is not proposed to bring this decision to Scrutiny, as there will be a need to sign the contract in a timely manner in order to kick off mobilisation, and as the process leading to award (including the award criteria) will already have been subjected to extensive scrutiny.
5. It is proposed that award of the Professional Services and Traffic Signals contracts be delegated to the Director of Environment, Transport and Development in consultation with the member project board and the Head of Procurement.

## E1.2 PROJECT BOARD

1. The project is overseen by a Project Board chaired by the Cabinet Member for Planning & Transportation and including the Cabinet members for Finance and Efficiency, the assistant cabinet member for planning and transportation, nominees from the Liberal Democrat and Green Parties, the Director of Environment, Transport and Development and the Heads of Highways and Procurement.

## E1.3 OFFICER STEERING GROUP

1. The Senior Responsible Officer for the project is the Head of Highways. He is supported by the Head of Procurement and by an officer steering group which meets weekly and which includes legal, finance, HR and procurement support.
2. Day to day oversight of the project is with a Project Director, supported by a Project Manager.
3. Full details of resourcing for the procurement phase are below. Specialist technical advisers have been bought in from Buro Happold to advise on particular aspects of contract drafting. The main staff members involved are listed below.

Post holder	Job title	Role
John Joyce	Assistant Director Highways	Project Owner
David Allfrey	Highways and Major Projects Manager	Project Director
Nick Haverson	Major Projects Support Manager	Project Manager
Nick Woodruff	Engineer	Project Assistant
Al Collier	Head of Procurement	Procurement Lead
Joan Murray	Head of Sourcing	Procurement and Project control
Ché Metcalf	Procurement Specialist	Procurement Support
Fiona McDiarmid	Assistant Director Economic Development & Strategy	Critical Friend
Andrew Skiggs	Environment, Transport and Development Finance Business Partner	Finance Lead
George Core	Solicitor	Legal Lead
Liz Jackson	Programme Manager – Highways, Suffolk County Council	Critical Friend and external advice
Andrew MacKie	Project Director, Buro Happold	Specialist Contract Advice
Marcus Tunaley	Senior Consultant, Buro Happold	Dialogue and Evaluation Specialist
Andy Chard	Senior Consultant, Buro Happold	Specialist Contract and Commercial advice

Post holder	Job title	Role
Debbie Reilly	Business Support Assistant	Administration Support

## E2 BENEFITS REALISATION AND RISK MANAGEMENT

1. The Project Board will remain in operation until the new arrangements have bedded down and will oversee benefits realisation and risk management.
2. The board has agreed<sup>11</sup> that financial savings from the new arrangements, both initially and over time, will be reinvested in the highways service.
3. A risk register, setting out principal risks and countermeasures, is attached at Annex C.

## E3 POST PROJECT EVALUATION ARRANGEMENTS

1. A Gateway 4 review will be undertaken around February 2014 to verify readiness for launch of the new service and progress will be reported to the project board and to the scrutiny committee. A decision will be taken nearer the time as to whether this should be peer-led or internal.
2. Performance of the new arrangements will be reported periodically to Scrutiny and, via the usual performance monitoring arrangements, to Cabinet.

---

<sup>11</sup> The minutes of the Environment, Transport and Development - Highways Procurement Board meeting of 25 July 2012 item 3.2.12 stated that 'Members are minded to reinvest savings into the highways service'.



## F ANNEXES

Annex A: Concept viability report	<i>Attached</i>
Annex B: Draft OJEU notices	<i>To be attached when OBC goes to Cabinet</i>
Annex C: Risk register	<i>To be updated following Gateway review</i>

# **Intellect Concept Viability Report**

## **Norfolk County Council**

### **Environment, Transport and Development Services**

**July 2012**

## **CONTENTS**

- 3. Introduction**
- 3. Background to the Environment, Transport and Development Services proposals**
- 4. Questions**
- 16. Conclusion and Next Steps**

## Introduction

This paper provides Norfolk County Council with a summary of the views of industry representatives on its Environment, Transport and Development Services proposals. It focuses on the most pertinent issues and has been produced following a workshop, as well as the distribution of a number of key questions that were posed to providers. The workshop took place on 14<sup>th</sup> June 2012 and included representatives from Norfolk County Council, consultancy firms, contractor organisations and specialist companies.

## Background to Environment, Transport and Development Services Project

Norfolk County Council is seeking providers to assist with the delivery of its Environment, Transport and Development Services. The authority proposes to enter into arrangements with service providers for design, management, construction, maintenance and improvement of various civil engineering works and other related services; also consultancy services to include planning, testing, economic analysis, training, strategic waste management and environmental advice. The successful providers will assist in ensuring that efficient, effective and continuously improving services are delivered with a focus on demonstrating improvement in value for money and local and public satisfaction with the services.

The service requirement will be county wide but to include the option to work across neighbouring county boundaries. The County Council currently manages the highway network which includes but not limited to:

- 9,800km of county road network (with 3,200km priority network gritted per run)
- 4,100km of footways
- 137,000 gullies
- 50,000 streetlights
- 2,000 bridges and other structures and 2,700 smaller culverts
- 375 signal controlled junctions and crossings
- 453 Vehicle Actuated Speed (VAS) signs
- 3832 km of Public Rights of Way

The requirement includes delivery of off-highway works such as design, construction and maintenance of car parks, amenity sites and household waste recycling centres. Further information can be found in the [PIN](#)

The workshop was designed to provide an opportunity for potential providers to find out more about the requirement. Its aim was also to give Norfolk County Council the opportunity to explore options for the proposed arrangements to help it to finalise its procurement plans.

## Questions

Industry representatives discussed the following questions at the workshop and then submitted written responses which were collated and anonymised to form a consolidated industry response.

### KPI's, Payment Mechanisms, Contract Lengths Incentives

#### 1. What are the most effective drivers of improved performance?

Overall respondents were of the view that performance should be measured through two sets of indicators:

- strategic indicators that relate to the overall contract performance, direction and partnership and which should be used to determine the duration of the contract to the maximum permitted – examples might include customer satisfaction and the carbon footprint of the service
- operational indicators that ensure the smooth day-to-day running of the contract and compliance, which have financial gain or pain attached to them – examples might include the number of defects or time-overrun incidents

Consultants and contractors should be able to deliver to time and budget and should be penalised for failing to do so. Indicators measuring performance should be meaningful and SMART (i.e. Specific, Measurable, Achievable, Relevant and Time-bound). The number of indicators must be carefully considered and limited to no more than approximately 10 or 12 in each category. Information for the indicators should be obtained from day-to-day operations without the need for additional work. Higher-level outcomes should result in reputational benefit to all parties.

#### 2. What are considered good financial incentives/penalties?

The following were considered appropriate financial incentives and penalties. Ultimately, providers were of the view that “carrots are more effective than sticks”.

- Contract duration related to performance, which allows clarity around ROI but depends on the appetite for asset transfer.
  - Options include a shorter-term contract with the possibility of extensions or a longer-term contract that can be shortened for poor performance.
  - Whatever the approach, providers should be given notification of any issues in good time.
  - The preference was for starting with a long-term contract: better behaviour throughout the life of the contract will be generated if all parties see that continual success will enable longevity.
  - Some providers asked whether NCC might even consider an open-ended contract, with appropriate mechanisms for breaks due to poor performance.
- Target costing
- Profit linked to performance
- Risk i.e. NCC's ability to influence price through the appropriate ownership of risk and being clear what it will or will not hold
- Outcome-linked payments
- Potential to link to the Highways Term Maintenance Association (HTMA), particularly in terms of the use of HTMA indexation
- An opportunity to dovetail the Professional Services contract into the Works contract and at a convenient break point in the future.
- Rewards for innovation, with careful consideration given to a fair and equitable mechanism for sharing savings across all three parties. This approach has, to some extent been used by the Highways Agency (HA) and could be encapsulated in a KPI.

### **3. What is the relative role of increases/decreases in contract duration?**

The majority of providers emphasised that contract duration affects investment and capital costs, in terms of the stability of staffing and resources for example.

Some suggested that contract extensions were a good way of incentivising providers (reviewed either at break points or at the end of the contract). However, many felt the preferred option was to have a contract length of around ten years with deductions in time resulting from poor performance (rather than a contract period of five or seven years, with extensions granted as the contract progresses up to the maximum period). The reasoning in support of this view was that it allows providers greater planning certainty and control, starting with a period for investment against which performance must be managed to retain the position. North Yorkshire County Council was cited as an example of an authority that had taken this approach. Either way KPIs linked to financial incentives and penalties help to keep tension in the system.

However, some respondents suggested contract duration was not a significant incentive since there is a danger that performance improves only as assessment deadlines approach.

Additional comments from respondents are summarised below.

- An opportunity to extend the length of the contract might be important towards end of contract, since it may limit an anticipated loss of staff.
- NCC should give careful consideration to the fallback needed in the event it wished to terminate a contract quickly.
- Transport for London (TfL) has a penalty mechanism in place which is reviewed on an annual basis; although providers appeared ambivalent about this approach.
- NCC should be clear as clear as possible about its preference in terms of higher cost and certainty, compared with additional costs.

### **4. What is your view on the effectiveness of capping or reducing annual indexation rates over the duration of the contract?**

Capping or reducing annual indexation rates can be seen by some clients as a way of ensuring continuous improvement, for example by giving providers 80 percent of the annual indexation and expecting them to make up the remaining 20% from increased efficiency and improved operations. However, respondents noted that as there is a limit to how much an organisation can really improve within a set timeframe and suggested that the reality is that initial pricing may reflect the need for increased initial recovery to subsidise later discounting.

However, there was a general consensus amongst providers that HTMA indexation would be most appropriate for the industry, with respondents noting that Transport for London, Shropshire Council and Suffolk County Council have all used this in recent tenders. Contractors raised the question of whether it was possible to link performance to indexation.

### **5. What would be the impact of annual reviews to vary the percentage of pain/gain share based on previous performance?**

Reviews would be welcomed as an incentive to focus on efficiency. Whatever formula is used there must be a real incentive for the service provider to strive for continual improvement in service. Contracts are all too frequently designed so that the client takes all the gain and the provider all the pain. The pain and gain should be shared equally since this helps to engender a true spirit of cooperation and collaboration between parties. Retrospective incentivisation was not viewed well by workshop participants who emphasised the importance of forward looking incentivisation.

There were questions around how incentivisation and payments would work through joint design teams. Ultimately, NCC requires an incentives process that is intelligent and flexible, rather than fixed for the duration of the contract. But while flexibility may be required some

respondents were of the view that the relative percentages of incentives between parties should be fixed, because varying the weighting as the contract develops could act as a disincentive since it may involve providers working harder for less benefit.

If a pain and gain share approach is used then it was suggested that an annual review should feed an innovation fund so that the budget remains within the highways contract.

## **6. Which areas of risk allocation within the contract are likely to significantly or unnecessarily increase costs for the client?**

Effective partnership depends on mutual trust that risk will sit where it can best be mitigated. Respondents were of the view that NCC should accept some risk particularly around political priorities, democratic control and legislative change. Other areas of risk allocation within the contract that were viewed as potentially likely to significantly or unnecessarily increase costs for the clients and which need to be clear at the outset included:

- TUPE
- pensions liability, particularly legacy local government pensions
- transfer of assets
- accuracy of data for lump sum items
- provision of office space – it was suggested that NCC make clear what office space is available to ensure bidders can price accordingly

## **How does the industry feel about rewards for generating initiatives and cost savings?**

### **7. How do we incentivise innovation to minimise overall costs?**

Some respondents asked whether it might be possible to agree an innovation KPI to encourage providers to generate cost saving initiatives, although to be effective this would need to be outcome focussed. Overall it was suggested that cost savings should be shared between the three parties, the balance of which should be determined by the impact each party has had. However, the difficulty lies in determining this on a fair and equitable basis.

The Highways Agency (HA) incentivises providers to submit business cases for ideas that will generate improvements and cost savings. Savings are then shared equally between the HA and the provider in the first year, with HA receiving 100% of the savings in the following years.

Care should be taken to ensure the original OJEU notice does not limit providers in the ability to deliver additional services in the future (which are outside the current scope) and which might generate savings, such as Facilities Management, gritting etc.

### **8. Where would the risk lie for initial investment and trialling?**

Respondents typically favoured triumvirate working, with the risk for the initial investment sitting with all parties so that there is a common will to make the initiative work whereby all parties would benefit. A pot of money or innovation fund could be paid into by all parties and used by the project team to kick start initiatives. If NCC wishes to take a significant share of any savings it should also hold the risk.

In terms of governance arrangements for the distribution of shares, this should be agreed at a board level and supported by the project management, monitoring and control processes. Trialling should run in parallel with existing processes to maintain service levels and reduce implementation risk.

## **9. What is the best way to distribute benefits for implementing improved processes/methods?**

Many felt that this question referred back to the questions on Continuous Improvement, Flexibility, Savings and Innovation above. It is important to understand how benefits have come about. The way in which organisations review what they do will generate better means of delivery or improvements in process as part of day-to-day business and in these situations the benefit should sit with the respective organisation. Benefits derived from a business case and a proposed better way of working between the organisations for the greater good of the Norfolk partnership should be distributed accordingly.

Generally speaking providers favour cash payments, contract extension opportunities, and a percentage share of savings together with agreed reinvestment in highways services (including public perception schemes).

### **Lotting Strategy**

**Norfolk will have a minimum of two lots for the provision of its services:**

- **White collar (or professional services provider)**
- **Blue collar (construction services provider).**

**In addition to these Lots, we are considering separating the supply and maintenance of traffic signals and possibly gully emptying.**

#### **1. What are the benefits and/or risks of this separation?**

Responses were somewhat mixed, although many respondents were comfortable with either combining or separating these elements.

Combining both elements within the main works contract, would see the responsibility for managing, programming and coordinating the operations will fall to the main lot provider. The benefits were seen to be a LEAN approach with enhanced programme management, performance monitoring and communications. A main contractor should be able to manage the performance of local providers and standardise Health & Safety performance, data capture and administration on behalf of NCC which would allow Norfolk to ensure that money spent resides within the county.

Benefits of separation

- Separation of Traffic Signals Supply and Maintenance, for example, is a tried and tested method of delivery and procurement in other contracts, with specialist work staying with specialists.

Risks associated with separation

- The need for additional contract management by NCC
- Potential for margin-on-margin
- Need for alignment between contracts to allow innovation across the service
- Control of performance indicators
- Additional representation required at management board level
- Emergency response risks created by another link in the chain of command, and where operational aspects are usually streamlined within the main contract.
- The level of resource and back-up that the suppliers can provide, since they may be smaller organisations with less reach-back than bigger organisations
- Possible TUPE from the current contractor to the NCC for the staff who currently carry out this function.

It was noted that standalone bids could potentially be combined during the dialogue phase.



## **2. Considering all Lots, where can the main contractor/supplier add most value through supply chain management?**

The main contractor should work with NCC and the professional services provider to get an agreed long term programme in place, preferably with a two or three year look ahead, so that all parties understand the available spend and what work is due when. This allows resources to be levelled and to provide the supply chain with a near steady stream of work that then allows them to work at their most efficient. Ultimately, this reduces the cost of administration and coordination by council officers.

## **3. What NEC options would you consider to be most advantageous for the services supplied within these scenarios?**

Overall, respondents favoured the NEC3 Term Services Contract, with appropriate bespokeing to suit NCC's requirements.

## **4. What experience is there of these arrangements, and what issues exist in managing the interfaces between providers?**

Works of a very specialist nature, for example traffic signals, may benefit from the use of a specialist supplier; although the primary disadvantage is the need to for NCC to manage another contract.

Gully emptying, for example, can benefit from residing within a larger contract as resources can be shared during work fluctuations and plant purchase leverage can be achieved and indeed this is usually part of a combined service. Similarly waste and recycling was seen as a standard, rather than niche, service. Participants suggested GPS asset management should be specified as a requirement of the main contract.

The best commercial mechanisms should be applied to the different elements of the service for example reactive and emergency services might best dealt with through a cost reimbursable mechanism, while other elements might benefit through lump sums. This depends on the maturity of the contract, the asset information and view of risk.

The majority of respondents have experience of these arrangements across different contracts, with the size and nature of the supply chain varying according to the service. Flexibility is critical and it is important to invest time to engage with the supply chain to ensure they perform to the required standard. If the supply chain is fully engaged and considered as a full partner in the service interface issues are minimised. The use of noticing, permitting and full programming and planning tools for the whole network provide solutions to interfacing issues.

## **Continuous Improvement, Flexibility, Savings and Innovation**

### **1. How would you encourage Continuous Improvement and generation of savings?**

#### **a) How do you best incentivise continuous improvement?**

Continuous improvement arises from the culture of the partnership as a whole and requires the shared commitment of all parties. Continuous improvement can only be achieved in an environment which is structured to enable it - contractually, financially and through the specification - which must be flexible enough to enable innovation to flourish. There are standards, such as BS11000, that provide a systematic approach for establishing business relationships focussed on partnership success.

Ultimately, the sharing of savings provides an incentive to do more for less and to continuously improve efficiency. Hertfordshire County Council has recently tendered contracts that provide incentives to broaden contract scope through successful delivery and

share savings generated. However, this model is yet to be used and so has not generated evidence of success to date.

A commitment to reinvest savings in even better highways and transport services for Norfolk would further incentivise economy and efficiency improvements by providing further work for the partnership and better roads. Improvements to the services delivered to Norfolk communities will be the real measure of partnership success, and reputational benefits should not be underestimated. The culture of the organisation should be to continuously improve highways services and so establish a flagship partnership that will benefit Norfolk communities and will also be seen as best practice across the industry. This will help partner organisations build their wider business and so benefit commercially from partnership success.

NCC must consider how it wishes the benefit of any continuous improvement to be taken into account in the contract. If indexation is capped or discounted it can be taken there, and this will have been allowed for within the tender price that is submitted. Otherwise, continuous improvement can be incentivised on a financial or a contractual basis i.e. with the provider delivering the conditions of the contract which may require, for example, two examples or items of continuous improvement in a year. However, this approach can be debilitating in the longer-term since there is likely to be a limited amount of continuous improvements that can be generated over the duration of a long-term contract. An alternative approach is purely financial; based on individual business cases that are established at the time the improvement is identified, with the provider taking the saving in the first year and after that the saving is in place for the contract through amended rates or reduced prices. An innovation fund could be set up to fund innovations annually; this can be funded in a variety of ways. Reporting procedures and data capture associated with monitoring improvements should be clear and understood by all parties to ensure transparency.

**b) How would you develop and maintain an innovative culture across the whole service (i.e. all the services within the contract lots)?**

With separate contract lots, developing and maintaining an innovative culture across the whole service is a key issue that will require leadership from NCC. Suggestions from respondents are summarised below.

- Creating a partnership board consisting of senior managers from all the services within the contract lots, which is tasked with discussing matters relating to any area of the contract that would benefit from greater collaboration between all parties. The use of an independent facilitator would optimise the board's effectiveness.
- Considering pan-Norfolk initiatives that would lead to continuous improvement or best practice and the general sharing of best practice.
- Defining what is meant by innovation, which is not the same as invention but the act or process of introducing something new. Acknowledge that innovations can be incremental in scale but can aggregate to deliver significant change, or can be transformational, leading to significant change through one well-managed breakthrough.
- Empowering teams and individuals to find better ways of working and to test new approaches within a risk controlled environment. Both managers and client officers should encourage innovations whilst controlling risk without constraining ideas or pilot initiatives.
- Using robust project management processes to manage bigger innovations that might be costly to implement but which have the potential to transform service delivery. Review the business case on a continual basis to ensure the investment (in terms of both finance and time) delivers best value. Incentivise the provider to 'invest to save' through the sharing of savings accrued from innovations of this kind.

### **c) What has worked well for you?**

Overall respondents were of the view that tripartite approaches to innovation had worked best with all three parties being able to benefit equitably from savings generated by innovation.

One particular example was the 3 Counties Alliance Partnership (3CAP) which involves Derbyshire, Leicestershire and Nottinghamshire County Councils and allowed innovation at a team level with individual client authorities, and through the 3CAP governance arrangements introduced partnership wide initiatives that resulted in significant savings.

## **2. Change can be expected, particularly budget fluctuation. We would like to build some flexibility into the contractual relationship.**

### **a) How do we build in flexibility without incurring extra cost?**

Flexibility is needed between both the client and provider, and between consultant and contractor partners. Rigid boundaries in scope should be avoided and more flexible and permeable interfaces should be encouraged, particularly since budgets, legislation, skills and performance will change over time.

NCC should endeavour to be as clear as possible in its requirements from the outset and throughout dialogue e.g. if there is a view that the payment mechanism may need to change this should be stated in the documentation. A provider noted that a similar client has stated that they desire to move to target cost by the end of year two and has set out how this will be done and the process by which it will be evaluated. This is an important area for dialogue to elicit ideas from bidders and to ensure there is clarity around the flexibility that is required. It is also an area that can be tested in terms of the “cultural fit” between organisations prior to final selection where teams are given different scenarios to establish how they react and perform.

Income not affected by budget fluctuation should be stated as early as possible so that the contract can be effectively budgeted and resourced, and this will make fluctuations easier to deal with. The contract needs to have enough flexibility within it for commercial arrangements to be flexed to meet demand. Long term programming and annual business plans must be accurately produced with a percentage likelihood of schemes coming to fruition placed against them.

One respondent noted that whilst the presumption that the Bridge Inspection Service should remain in house is understood, the capability of consultants to undertake roped access inspections and the information to be gleaned from maintenance teams encouraged to report defects should be encouraged.

### **b) What is your understanding or experience of flexibility?**

Industry players typically felt the key to resource utilisation optimisation is better and longer-term programming, with the removal of the constraints of annual budget cycles. Local Transport Plan (LTP) allocations, asset management systems, medium term financial planning and Comprehensive Spending Reviews (CSRs) all mean that it is becoming easier to predict budget trends and to formulate longer-term programmes. Ultimately, flexibility should allow parties to move to a different position or place whilst in contract without the need for protracted legal and commercial negotiations, and this might be around payment mechanisms or measurement of performance indicators, the ability to introduce new ways of working etc.

Flexibility to respond to both volume and type of work was a feature of the 3CAP contract which, given current constraints on public sector spending, has not followed the profile forecast in the tender documents. Delivery Managers worked closely with their 3CAP clients to improve the forecasting of emerging needs and deal with changing requirements.

### **c) What would you advocate to demonstrate this?**

A partnership approach at three levels is needed to plan for change.

- Strategically – a management board, and associated governance processes, should develop a three year foresight of budgets, programmes and emerging issues and plan for change collaboratively.
- Tactically - a business relationship plan empowers managers to work together collaboratively to respond to in year change and to switch resources to match changing need.
- Operationally – teams should be provided with the intelligence needed to provide a responsive service, understanding priorities that change at an operational level.

### **Sustainability**

#### **What would be the advantages/disadvantages of, and how could we incentivise, the following?**

Respondents suggested that the majority, or potentially all, of these items could be measured under the KPI process.

##### **1. Supporting local SMEs and supply chain**

Overall respondents were of the view that SMEs and supply chains would be used to support the delivery of the contract through peaks and troughs. Contractors or consultants are unlikely to 'bus in' a workforce; instead, local providers and staff will be essential to partnership success. The longer the term of contract the easier it becomes to invest in the local economy. A long-term view of the programme and planned spend also helps give organisations surety of workload and enables them to pass this message on to the supply chain.

Performance indicators can be set to encourage spend within the local economy, including national suppliers who have local presence. Transferring these indicators on to supply chain partners can help ensure local supply chains are supported. However, this raises the question of how the flow of money between companies can be measured.

##### **2. Use of recycled materials or products manufactured in an environmentally friendly/sustainable way**

The use of recycled materials is a must and to incentivise and facilitate this use the council could make arrears available for waste transfer and processing of materials through their existing depots and property portfolio or through the waste management contract.

There is also the facility to incentivise the use of recycled materials or products manufactured in an environmentally friendly/sustainable way through the design and specification phases. While a financial incentive might not be appropriate a "contract barometer" for the partnership, showing how much actual additional work has been facilitated or budget saved by the use of recycled materials, could be beneficial. The specification must be receptive to the use of alternative materials of equal quality, trials of their use are essential; this is assisted by a laboratory which can accommodate these tests and trials. To get the most benefit from recycled materials a county wide recycling strategy must be introduced where all providers are encouraged to use local facilities for waste. This provides economies of scale which makes the operation much more viable.

In terms of carbon footprint, whole life cost should be considered as well as embedded CO<sub>2</sub>.

### **3. Better use of Waste Management Planning**

Respondents asserted this should be integral to the contract; and NCC should encourage application of the CEEQUAL term maintenance standard.

### **4. Requiring apprenticeships**

Highways Agency (HA) providers are required to provide one apprentice per £25m of turnover. Transport for London's recent London Highways Alliance Contract (LoHAC) tenders included a formula for addressing apprentices and training which was relatively broad in its approach and might provide some insights (while acknowledging the demographics of London are different to Norfolk).

Ultimately, a flexible approach to apprenticeships is key to success, as the standard 16-18 year old approach might not suit either the local demographic or the service need. Binding targets could be sought within tender submissions, but these should not be at the expense of a balanced workforce. If a target percentage of apprentices is required, these placements should be shared between consultant, contractor and the supply chain to provide a more rounded experience.

Partnerships with local colleges are an important factor for ensuring the correct training is available and provided.

### **Opportunities to Review Standards**

**We will need to regularly review the standard of service that we provide during the period of these arrangements as budgets fluctuate.**

#### **1. How do we incentivise challenge and review of our practices and standards to help us save money during the contract?**

Providers tended to be of the view that regular review of standards and practices is welcomed. However, standards should support delivery rather than become ends in themselves which tends to stifle innovation, efficiency or effectiveness. Governance arrangements should focus on consensus to achieve shared objectives and standards should be aligned with what the partnership is striving to achieve.

Challenging practice and standards depends upon the possession of sound asset data, in terms of the amount of assets themselves and how they perform. Armed with this information it may be possible to review the work carried out, what is actually required and then move to a risk-based approach to operations. For example, gully emptying could be done in the first year empty with data recorded in terms of performance and condition, and paid for either by Statement of Requirements (SOR) or lump sum if numbers are known.

A similar approach can be taken in the second year, allowing a picture to be built of which gullies need to be done annually and which can be left. During this time you a picture can also be built of flood hot spots etc. The next stage might be to build up a reduced lump sum or a target cost for delivery of the year-three cycle and so on, thereby allowing NCC to save money on the service.

#### **2. What are your observations on the scope to reduce current technical and operational standards (e.g. Traffic Management to Chapter 8)?**

While there may be considerable scope to review technical and operational standards, particularly in the use of recycled material, education is important to ensure new learning and knowledge is implemented and that new materials are used.

Standards focussing on providing road workers with a safer environment within which to work can be reviewed but this tends to be more about local practice than changes in standards.

Implementing Chapter 8 of the Road Safety Plan can help to allow practicing engineers to exercise judgement within a risk controlled environment.

**3. What criteria would we need to consider so the client can realise the greatest saving from adapting these standards?**

NCC should be clear about the outcome that it requires from the contract to ensure there is flexibility within the initial contract arrangements or a mechanism to facilitate change to the contract if required. A number of respondents asserted that a business case should be developed in each case, which should clearly identify the service quality benefits as well as the cost and risks associated with adapting standards. The approval process should be simple, robust and agreed.

**4. How do we avoid the impact of compensatory enhancements being paid to the provider?**

Clearly it is important for there to be clarity from the outset as to the outcome required from the contract. There should be mechanisms to facilitate any changes to the contract where this is required in order to avoid different interpretations by different parties. The planning of budgets is important to ensure that resources can be adjusted in response to fluctuating budgets to allow for forward planning combined with an indication of certainty, since this will assist providers.

Generally speaking, it is important to ensure there is accurate information and data on existing assets and clear specification as to what needs to be done. The dialogue process can be used to gain a full understanding of the issues on all sides.

An additional suggestion was for graduate/technician development to be considered in the professional services contract.

**Systems and Interfaces Management – Working Together**

**Consider what arrangements could be put in place to influence cultural shifts to ensure that main providers and the County Council complement and support each other - including separate PFI providers (i.e. Amey for street lighting).**

**1. What would be your preferred arrangements for consistent interfaces and common systems?**

Generally speaking, a partnership board is a good way of developing and maintaining the required cultural shift across the whole service. Such a board typically consists of senior managers from all of the providers within the contract lots, which meet to discuss matters relating to any area of the contract which would benefit from greater collaboration between all parties to support the cultural shift. The effectiveness of the board may be optimised through the use of an independent facilitator.

On the whole, contractors suggested that their preference was for NCC to stipulate a preferred system, since many have experience of working with different systems and developing interfaces as required. They were of the view that this should be set out at the start of the tender process. However, some suggested that the subject would benefit from a separate workstream being established and for it to be dialogued through the tender process as in doing so it should help shape a solution agreeable for all parties. However, introducing a new system at the same time as mobilising a new contract could introduce risk. Either way NCC will need

to facilitate the cooperation of their existing provider to allow other providers access to the information and data required to establish an interface.

Other suggestions around arranging consistent interfaces and common systems included:

- adopting relevant standards that provide a systematic partnership approach
- considering how this relates to the Street Lighting Private Finance Initiative (PFI) programme, in order to coordinate and share road space and time and materials costs
- providing clarity around the implementation of a permit system in Norfolk

## **2. In your experience have client or provider systems formed the most sound basis (particularly considering ICT systems)?**

Client and provider organisations develop systems for their respective needs; and while there is an element of commonality across systems, the drivers tend to be different with them both forming a sound basis in a way that meets their individual needs. Ultimately the interfaces between ICT systems no longer pose the levels of constraint they have in the past. Data mining, for example, may allow existing client systems to be retained and partners to extract the data needed for complementary applications. Geographical Information Systems (GIS) provide an effective tool in sharing data in a simple, powerful and transparent way. Collaboration tools can also be used via the internet and are widely used on multi-party contracts (e.g. Cross-Rail and HS2), allowing parties to manage documents and share files securely and effectively.

A non-integrated approach might swing in favour of the client providing key systems, such as a preferred Asset Management System.

## **3. How have common systems or interfaces been introduced to help enable access to common data and financial information?**

There are two key types of software that need to be considered. These are:

- transactional e.g. for works ordering and monitoring KPIs – the emphasis should be on automation, ensuring systems interact with minimal manual input
- collaborative e.g. to allow different parties to access project data and information and to provide disciplines with a forum in which they can discuss particular issues and topics

A web-based Software as a Service (SaaS) approach would allow the secure sharing of information, and allow different users to have different permissions.

One point that was emphasised at the workshop was that the programming function ends when final payment is made.

## **4. What are the preferred platforms and what are the advantages/ disadvantages with these systems and their interfaces?**

Respondents noted the implications of companies' corporate IT policies and protocols, which might make it difficult for contractors to use the works order module on EXOR for example. There was no consensus as to preferred platforms, and some contractors have developed their own systems.

## **5. How can the contract structure help interfaces and working together?**

Establish an enabling culture; then identify the processes to support that culture; and finally, specify the appropriate systems and software.

Define the overarching governance structure and the bodies that will support it (e.g. Strategic Board, Innovation, and Performance) and include relevant information in tender docs etc.

At the start of the mobilisation process all parties should map out how the contract will function as an overall end-to-end process, showing how the organisations will interact, what the required inputs and outputs are etc. This picture will make it easier to identify the required interfaces and any further development needs. Standard business processes should be applied wherever possible since there will be systems to support these, and most systems are now able to interface effectively.

Respondents suggested NCC should assess the value chain and determine what works best, adopt a LEAN process perspective, and always remember that the success or otherwise of systems and processes ultimately depends on what people feed into them (i.e. “rubbish in, rubbish out”). Providers would benefit from understanding whether NCC plans to continue EXOR.



## **Conclusion and Next Steps**

Intellect fully supports the consultative process that Norfolk County Council has undertaken and would welcome the opportunity to work with the council on the issues raised at the workshop and in the report where further industry input would help achieve a better procurement and better project outcomes.

If you require any clarification on the issues raised in this paper, please contact Melissa Frewin  
E: [melissa.frewin@intellectuk.org](mailto:melissa.frewin@intellectuk.org) T: 020 7331 2169