



City Transport Services

Procurement Options Report

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Brighton and Hove City Council

Commercial in Confidence

Procurement Options Report

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Executive Summary

Jacobs undertook a review of Brighton and Hove City Council's (BHCC) current Operations and Maintenance in Spring 2021 (BESP/0033/REP/01). This first phase of preparation for replacement contracts to those currently deployed to deliver highways renewal, capital scheme and operations and maintenance of Brighton and Hove City Council's network, assessed the current service and identified a need for change.

This report forms part of Phase 2 of the three-phase approach to development of replacement Highways Contracts and explores and evaluates the procurement route options to address those needs. In parallel, as part of Phase 2, Jacobs is undertaking further review and audit of key areas and receive further information to develop the requirements for the new Contracts.

Phase 3 will follow to develop improvement plans and support defining and development of any new contracts / contract changes, to meet an overarching deadline of live replacement contracts in April 2022. It is anticipated Phase 2 and 3 will overlap to some extent.

The report is informed by feedback provided by members of the City Transport and other teams within BHCC through workshops, one-to-one meetings, and fortnightly progress meetings.

Assessment of Existing Performance, Contract Scopes and Budgets

The 2020 National Highways and Transport Network survey report for BHCC provides some customer insights into perceptions of those sampled at the time. *"The survey report advises respondents were most satisfied with 'Local bus services' and least satisfied with 'The condition of roads'. 'The condition of roads' was the most popular choice for improving the level of service and spending more. Brighton's satisfaction scores range from a high of 83% for 'Number of bus stops (PTBI02)', to a low of 32% for 'Speed of repair to damaged roads (HMBI30)'. The largest positive difference from the NHT Average was for 'Local bus services (aspects) (KBI07)' which was 21% above average, while the indicator with largest negative difference in satisfaction from average was 'Traffic pollution (KQI04)' which was -11% below average with an actual score of 34%."*

There are two Lots under the current Highways Safety Contract which is where the majority of spend on traditional civil engineering functions takes place. Lining and drainage are not included within the scope of the current Highways Safety Contract. Parking services appoint the lining works contractor, having the greatest need for these services, and, from an operational perspective, a fully functional service generating a significant source of revenue for BHCC.

Street lighting and Traffic Signal Contracts both have significant durations left before expiry and hence the contracts have not been reviewed. It is understood that these are performing well.

There is system duplication within BHCC and opportunity to rationalise the number of systems in use and to make better use of the functionality of those systems.

Details of historic 3-year spend, with Key Contractors is summarised in Table 0.1 below. Table 0.2 below shows 3-year spend on each of these contractors by each BHCC Department.

Contract	Lot	3 year Spend	Prime Department Using	Other BHCC departments using
Highways Asset Management	1	£18.27M	CT – Transport Projects and Engineering	See Table 1.2.2
Highways Asset Management	2	£4.01M	CT – Traffic Management	See Table 1.2.2
Drainage and Gulley Cleansing	N/A	£1.07M	CT – Traffic Management	See Table 1.2.2
Lining	N/A	£1.12M	CT – Parking	CT - TM
Street Lighting	N/A	£6.91M	CT – Traffic Management	N/A
Traffic Signals	N/A	£1.66M	CT – Traffic Management	N/A
Asset Management Systems	N/A	£0.58M	CT – Traffic Management / CT – Transport Projects and Engineering	N/A
Hampshire Framework – Valley Gardens	N/A	£10.1M	CT – Transport Projects and Engineering	N/A

Table 0.1: Historic three year spend with Key Contracts supporting City Transport Services

Service Area *	R J Dance Ltd	Edburton Ltd	F M Conway Ltd	3 year spend
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City Parks	£520,757	£174,508	£1,486	£696,751
Sport and Leisure	£184,119	£16,395	£7,343	£207,857
Property and Design	£34,196	£80,196	£413	£114,805
Property & Investment	£106,997	£-	£-	£106,997
Major Projects	£-	£76,119	£-	£76,119
Bereavement	£54,078	£-	£-	£54,078
Development Planning	£-	£44,500	£-	£44,500
Parking Services	£36,153	£-	£-	£36,153
Royal Pavilion and Museums	£17,050	£-	£-	£17,050
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City Transport Total (from Table 9.4 below)	£12,624,597	£9,667,360	£1,066,779	£23,358,736
Total Other Departments	£985,172	£447,169	£18,132	£1,450,473

Table 0.2 BHCC Spend by Council Department with Key Contractors 2018-2020 (estimated full year outturn)

*** BHCC published expenses data against Service Area has been found not to align with some department records using other systems. The top two rows in the table have been modified to department records for Lot 2. However, the total spend is considered a robust estimate.**

Lot 1 is utilised widely across other divisions within BHCC. Review of the detailed data reveals this to be primarily with Environment & Regulatory Services, and with Housing Management. These divisions should be considered key stakeholders to be engaged with when developing plans which might impact their ability to readily procure repair and maintenance works alongside all departments from the City Transport Directorate.

Although there are KPIs within the Contracts, these are not of a form which enables their use to appropriately monitor and drive continuous improvement in performance. They are also monitored either in an ad-hoc fashion, with no agreed measure, or else not measured at all. There are no regular Framework meetings with suppliers, no active works pipeline, and management of the contracts is often by word of mouth.

The Need for Change

The current arrangement of City Transport currently presents some opportunities to streamline under functional arrangements. There is some overlap between Projects and Engineering and Traffic Manager Services. The Business Development Manager function could be expanded to cover Project Management and Control functions across all City Transport service areas, for example: monitoring software licences, to avoid duplication

of coverage and consolidate with existing service providers to City Transport as appropriate; document management; document storage processes and procedures. These changes are being explored in parallel and are to be considered in place for the delivery of the next generation of highway services contracts.

Similarly, Project Delivery under the Framework Contract will be placed under the stewardship of a Framework Manager, potentially with individual Lot Managers as appropriate, to provide BHCC staff with guidance on the use of the Frameworks. Key Framework Manager/Lot Manager duties would include: responsibility for sharing guidance to those using the Framework; ensuring consistency of documents sent to contractors and management of contracts by reviewing proposed tenders and awards; compiling, maintaining, and sharing a scheme pipeline with Contractors; and providing processes and procedures for contract management, which they monitor, arranging audits to ensure a consistent, robust and professional approach is taken.

Recommendations

From the analysis presented in section 3 of this report it is recommended that the **Multiple Provider** delivery model remain in place for:

- Street Lighting
- Traffic Signals

The difference between **In-house with top-up** and **Multiple Provider** delivery models is not significant. Arguably, the current arrangement with inspections undertaken and works details being developed in-house already exploits the **In-house with top-up** delivery model to some degree. Therefore, the challenge is in what and how to outsource to bring the best of the Private Sector forward to work with BHCC.

It is further recommended that this **Multiple Provider** delivery model should also encompass:

- Medium Works and Improvements (Lot i)
- Highways Safety Maintenance, Operations and Small Works (Lot ii)
- Lining Works for Parking Enforcement (Lot iii); and
- Asset Management Systems provision (To replace existing systems providers Yotta and Symology)

The rationale behind the recommendation for these services is:

- Medium Value Works and Improvements (Lot i) – Such schemes by their nature are varied in type, volume and timing and therefore better suited to the private sector. It is typically outsourced by most authorities in the UK. Currently Works and Improvements construction is provided through Lot 1 of the Framework. Seeking 3 suppliers with the ability to use both single source and competitive options for works schemes enables a degree of competition to be maintained through the life of the contract, in addition to the competition to secure a place on the framework.
- Highways Safety Maintenance, Operations and Small Works (Lot ii) - Day-to-day Highway Safety Maintenance and Operations – BHCC has statutory duty to maintain the highway and repair defects within short turn-around times. Currently, this is provided through Lot 2 of the Framework and this has been outsourced for over 20 years.
- Lining Works for Parking Enforcement (Lot iii) – Parking revenue is extremely significant for BHCC and well-maintained and statutorily compliant white and yellow lines are crucial to obtaining revenue collection and to support enforcement where needed. The expected volume of work does not seem adequate to support multiple suppliers, therefore, a single quality supplier is needed to ensure maintenance of this significant revenue stream.
- Asset Management Systems – BHCC does not have the ability in-house and the majority of local authorities either procure this themselves or through one or more of their existing service providers. By procuring this themselves, BHCC maintain control over the systems and their functionality and can better manage their other suppliers through these, rather than if these were procured and controlled through one or more of its existing service providers.

- The outsourced suppliers all support other local authority contracts and since BHCC does not hold labour with the skills, plant and equipment in house, in-sourcing would be a significant risk.

A key challenge for BHCC is maintaining enough resources available through the Highways Safety Maintenance and Operations Lot 2 to provide the services when needed, and yet keep them busy on productive work for BHCC rather than on standby when not.

Current spend with the incumbent is a mix of Lot 1 and Lot 2 work totalling about £55K per month. As reported in Jacobs Highways Operation and Maintenance Review (Report BESP/0033/REP-001), the existing service provider, RJ Dance, advised that they typically have 5 to 6 two-man gangs working on the current Lot 2 and bring in other teams as and when needed. Two Supervisors, one for civils and one for patching, are employed full time on by RJ Dance for this works. These resources are likely to be subject to TUPE Regulations and appropriate notifications should be sent by the council to obtain details for all incumbent service providers where appropriate.

At the Contract and Procurement Workshop on 15th June 2021, the need for an amount of work to keep the Highways Safety Maintenance and Operations resources productive and available was acknowledged, and this was explored further at the Risk and Opportunities Workshops on 1st and 21st June 2021. There is the risk that a supplier under the new Lot ii) supplier (for Highways Safety Maintenance, Operations and Small Works) does not gain a position on Lot i) (for Medium Value Works and Improvements).

To enable the suppliers to have sufficient local resources available, it is therefore proposed to add in small value works and improvements (Small Works) to the Highways Safety Maintenance and Operations (Lot ii).

An NEC Framework Contract is the recommended head contract and recommended to sit over all lots. Three main Lots are proposed, being:

- Medium Value Works and Improvements (Lot i) – up to 3 suppliers
- Highways Safety Maintenance, Operations and Small Works (Lot ii) – single supplier
- Lining Works for Parking Enforcement (Lot iii) – single supplier

In addition, it is recommended that a Scope for Asset Management Systems is prepared and procured. This may be better suited to Supply terms or a NEC Professional Services Contract (PSC), but it could otherwise form Lot iv).

The proposed Contract Strategy is:

- Lots i) and iii) would both use the Engineering and Construction Contract (ECC), or the Engineering and Construction Short Contract (ECSC) where appropriate.
- Lot i) would be able to use ECC Main Options A to D with ability to add new items to a tendered Activity Schedule or Bill of Quantities or Price List (as applicable).
- Lot i) would have both Direct Award and Mini-Competition routes available, with the ability to procure Early Contractor Involvement.
- Lot ii) would be a mix of Term Service Contract (TSC) and ECC/ECSC. Modelling the works element on an ECC Option A/B basis (activity schedule or price list / bill of quantities) will create some commercial competition at Framework Tender.
- Lot iii) would suit an ECC Option B Bill of Quantities format with ability to add new items.
- Elements of Option E will need to be considered and incorporated through Z Clauses in all contracts to reflect change in service and works elements anticipated over the duration of the Contract.

It is recommended that a 4-year initial contract period with possible extensions arrangement (4 + 2 + 2) is adopted for all lots under the NEC4 Framework Agreement, extendable on the basis of performance, with the ability to terminate any one or all lots at a break point, in addition to the standard termination requirements.

The Construction Playbook (UK Government Procurement Policy Note 09/20) encourages authorities to 'Review future projects and programmes regularly (at least quarterly) to identify opportunities to bring appropriate work together in portfolios and leverage economies of scale to drive investment into new technologies and MMC (Modern Methods of Construction)'. Thus, the ability to compound a number of Small Works into a Medium Value works order is available to BHCC to manage workload through the lots.

It is recommended that a Framework Manager(s) is/are appointed to place governance on the operation of the framework contract, supplemented by individual Lot Managers and project managers under their direction as appropriate.

It is recommended that the delivery market is engaged to assist in the development of the contract to gauge appetite for this proposed approach and shape the contract to ensure sufficient response and attractiveness for a fair and competitive competition.

Secondary options will be considered further by Jacobs in the Procurement Plan and will be derived through the contract drafting process. It is recommended that development of the Procurement Plan and contract drafting commences on the basis of the recommendations above and runs in parallel with market engagement and governance approvals.

Figure 0.1 Proposed BHCC Contract Structure [Lot iii) Name to be corrected]

Delivery Model		Multiple Providers		Existing Street Lighting and Traffic Signals	
				New as lots below and new contract(s) for Asset Management System	
Overarching / Head contract				NEC4 Framework Contract	
Contract Period		4 + 4 + 2			
Lot Name	Lot I)		Lot II)		Lot III)
	Medium Value Works and Improvements		Highways Safety Maintenance Operations and Small Works		White Lining for Parking Enforcement
No of Suppliers Proposed	3		1		1
Contract Form	ECC/ECSC options		TSC for Service and ECC for Small Works		ECC/ECSC
ECC Works Main Option	Main Options - A, B, C or D		Main Option B		Main Option B*
	Direct Award Threshold TBD		Direct Award up to Threshold TBD		Direct Award
	Mini-Comp above threshold		Limited Small Works - Pavement only?		Limited to white lining only
TSC Main Option			Option A		
Scope			CAT 1 and 2 Defects Depot FM Option Winter Service Option		

* Need to review current contract which is understood to be working well

1. Introduction

1.1 Purpose

Jacobs undertook a review of Brighton and Hove City Council's (BHCC) current Operations and Maintenance in Spring 2021 (BESP/0033/REP/01). This first phase of preparation for replacement contracts to those currently deployed to deliver highways renewal, capital scheme and operations and maintenance of Brighton and Hove City Council's network, assessed the current service and identified a need for change.

The current arrangement of City Transport currently presents some opportunities to streamline under functional arrangements. There is some overlap between Projects and Engineering and Traffic Manager Services. The Business Development Manager function could be expanded to cover Project Management and Control functions across all City Transport service areas, for example: monitoring software licences, to avoid duplication of coverage and consolidate existing service providers to City Transport as appropriate; document management; document storage processes and procedures. These changes are being explored in parallel and are to be considered in place for the delivery of the next generation of highway services contracts.

Similarly, Project Delivery under the Framework Contract will be placed under the stewardship of a Framework Manager, potentially with individual Lot Managers as appropriate, to provide BHCC staff with guidance on the use of the Frameworks. Key Framework Manager/Lot Manager duties would include: responsibility for sharing guidance to those using the Framework; ensuring consistency of documents sent to contractors and management of contracts by reviewing proposed tenders and awards; compiling, maintaining, and sharing a scheme pipeline with Contractors; and providing processes and procedures for contract management, which they monitor, arranging audits to ensure a consistent, robust and professional approach is taken.

The report is informed by feedback provided by members of the City Transport and other teams within BHCC through workshops, one-to-one meetings, and fortnightly progress meetings. BHCC staff have been open and honest in sharing details of current practices and use of the current contract arrangements to inform the development of the recommended approach, together with provision of data. Without their help, this report would not have been possible. Due to the ongoing COVID pandemic restrictions, face-to-face meetings and working alongside BHCC staff has not been possible; however, the use of MS Teams calls, and dialogue has proven effective within these constraints.

This report forms part of Phase 2 activities of the three-phase approach to development of replacement Highways Contracts and explores and evaluates the procurement route options to address those needs. In parallel, also as part of Phase 2, Jacobs is undertaking further review and audit of key areas and to receive further information to develop the requirements for the new Contracts.

Phase 3 will follow to develop improvement plans and support defining and development of any new contracts / contract changes, to meet an overarching deadline of live replacement contracts in April 2022. It is anticipated Phase 2 and 3 will overlap to some extent.

1.2 Scope and Operation of Existing Contracts

The current framework delivery contract is split into two operational contracts:

- Lot 1 – Highways Works & Improvements
- Lot 2 – Highways Safety Maintenance

Lot 1 retains three contractors: RJ Dance, Edburton, and Aggregate Industries. This Lot delivers Capital Engineering Projects, with works of varying size and nature.

Lot 2 retains a single contractor, RJ Dance. This Lot delivers Category 1 & 2 Defects repair, Emergency Works, and small maintenance works, e.g. discrete lengths of carriageway resurfacing.

There was also a stand-alone contract with FM Conway for Drainage maintenance and repair.

Street lighting is provided under a separate Contract by Colas and Traffic Signals by Siemens. There is also a separate works contract held by Parking for lining with Hi Way Services.

Repairs, reconstruction, and general maintenance of BHCC's 14km of coastline from the impact of coastal erosion and flooding together with highway structures were previously awarded under an Engineering and Construction Contract that expired in 2019. A paper was presented to BHCC Policy Resources and Growth Committee on 18 July 2019 which recommended a new Framework with a four-year contract value estimated at £2.6M, typical commission values of under £90K, and annual spend of £300K were quoted within the paper. As a result, Coastal Structures strengthening and refurbishment together with Structures strengthening and refurbishment are within Scope.

The existing key contracts identified from Jacobs Review in Spring 2021 are shown in Table 1.2.1.

Contract	Lot	3 year Spend	Prime Department Using	Other BHCC departments using
Highways Asset Management	1	£18.27M	CT – Transport Projects and Engineering	See Table 1.2.2
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The current Winter Service provision is being reviewed and allowance should be made for an option to include this contract. In addition, there is ongoing consideration for a new Highways Operations and Maintenance Depot at Hangleton. This should similarly be considered as an option. Separate parallel workstreams are looking at the options and requirements for both Winter Service and a Depot in the medium and long term and will be subject of separate reporting.

Predominantly, Lot 1 and Lot 2 are used by City Transport, including by Projects and Engineering, Traffic Management and Parking Services. Lot 1 and, to a lesser degree, the Lot 2 Contract are, however, also used by several departments across the wider Council, such as departments in the Economy, Environment and Culture Executive including City Environmental (Parks), Cultural and Tourism and Sport (Sea Front Services) amongst others. Housing, which is part of the Neighbourhood's', Communities and Housing executive have access and use this contract to procure works, too. Table 1.2.2 below summarises use by other departments of these Contracts.

Service Area	R J Dance Ltd	Edburton Ltd	F M Conway Ltd	3 year spend
Transport Projects and Eng	£8,428,029	£2,217,771	£1,067,729	£11,713,529
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2. Objectives and Critical Success Factors

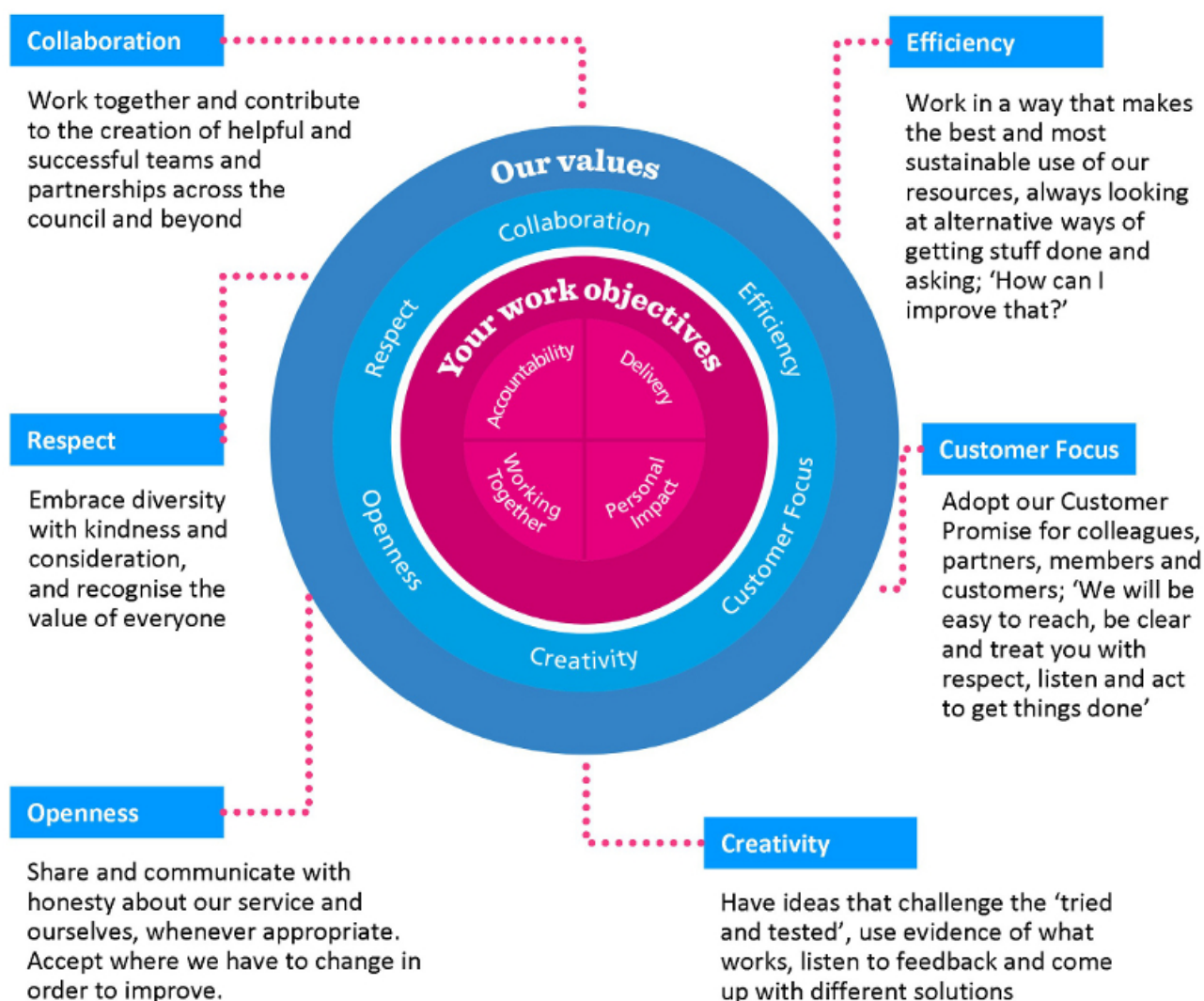
2.1 BHCC's Values

With support from the organisation and from their managers, all council officers are expected to give their personal best for our customers, citizens and for the city. To ensure that everyone is able to understand what this means, BHCC employees created and agreed six organisational values. Their values describe the qualities every officer is expected to demonstrate when carrying out their job.

There are four key areas of responsibility used in individual performance development plans, that work objectives are based on:

- **Accountability:** What you are accountable for and/or who you are answerable to?
- **Delivery:** What do you have to do or achieve?
- **Personal Impact:** How does your behaviour impact on others?
- **Working Together:** Who do you need to work with e.g. colleagues, customers and external partners?

Figure 2.1.1 BHCC's Values



2.2 BHCC's Policies and Strategic Objectives (Call with James(BHCC) to flesh this out)

BHCC's policies and strategic objectives are:

- Customer Promise
- Corporate Procurement Strategy https://www.brighton-hove.gov.uk/sites/default/files/migrated/article/inline/Corporate%20Proc%20Strategy%202014_1.pdf
- Contracts and tenders page policies <https://www.brighton-hove.gov.uk/topic/contracts-and-tenders>
- Local resources?
- Other policies and objectives?
- Standard competition requirements???

2.3 BHCC's Beliefs and Aims for its Highways Contracts

BHCC's beliefs and aims for its Highways Contracts are:

- **On-Time Delivery** - ensuring that disruption to road users and local communities is kept to a minimum
- **Quality as expected** - good performance will be when this is combined with on-time delivery
- **Long-term predictable work allocation** visible to supply chain partners
- **Price Certainty** - ensuring BHCC secures the best value throughout the project and not just at tender award
- **Whole Life Cost** - balancing investment cost with future maintenance costs to achieve the best value over the life of the assets
- **Innovation** - improving value and reducing the overall `
- **Incentives** - encouraging the supply chain to seek continuous improvement and cost saving initiatives throughout the delivery of the project
- **Supply Chain Integration** - reducing the potential for project delays with all suppliers working to one plan. Building collaborative long-term relationships. Greater trust in supply chain to deliver
- **Year-on-year improvements**
- **Lean Contract Management** - minimising project resource requirements through effective and efficient contract management with single points of contact
- **Shared learning and knowledge**
- **Risk Sharing** - ensuring the ownership of risk is apportioned in line with securing best value
- **Social value** - optimising content against BHCC's corporate priorities

2.4 BHCC's Critical Success Factors for its Highways Contracts

Critical success factors controlled by BHCC are:

- Scheme pipeline maintained and shared with suppliers
- Regular supplier briefings and updates
- Whole life cost
- Lean Contract Management
- Social Value
- Clear risk allocation

Critical success factors expected of Framework Suppliers working with BHCC are:

- On-Time Delivery
- Price Certainty
- Quality as expected
- Innovation
- Incentives
- Year-on-year improvements

Critical success factors expected of all stakeholders:

- Shared learning and knowledge

3. Delivery Model

There are a range of delivery models available to provide highway services. Jacobs' analysis in this section is based on the toolkit and guidance document for Highways Maintenance and Efficiency Programme – Procurement Route Choices for Highway Maintenance Services – Use of Toolkit and Guidance document, version 2 August 2014 (Ref 1).

Figure 3.1.1 below summarises the risks associated with the range of potential options available. (Reference 1)

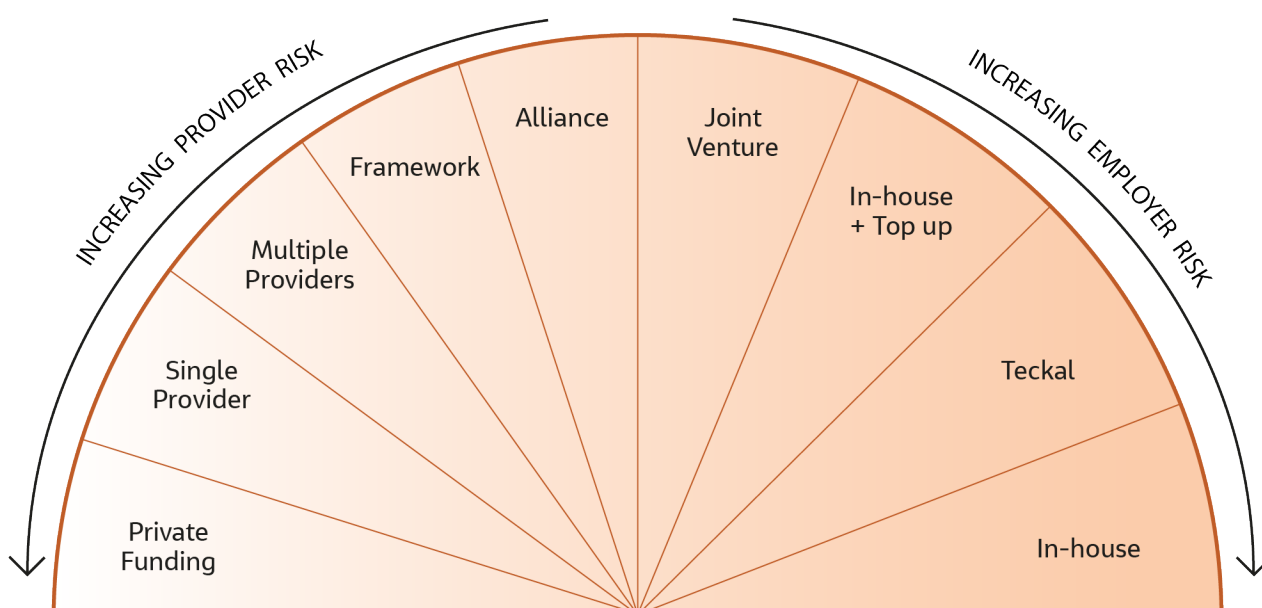


Figure 3.1.1 Typical Service Delivery Models (1)

BHCC currently runs a number of Services in-house, such as its refuse collection by Cityclean. Its current Highways Contracts range from a single service provider, for highways operations and maintenance, to a Framework with multiple service providers for its Scheme implementation.

3.1 Private Funding

Private Funding has been ruled out due to a lack of initial core investment need, which typically underpins the use of such a model and could be undertaken by the private sector at their risk. The lengthy, complex, and costly procurement and negotiation phases do not suit BHCC. Historic difficulties in maintaining flexibility and control of the assets under such a model, equally do not suit BHCC's need to maintain control of their assets using their in-house asset team.

3.2 Single Provider

3.2.1 Arrangements

A **Single Provider** option is currently in place for the neighbouring East Sussex County Council highways services. If followed, this model would see BHCC enter into a single contract with a single supplier to deliver all highways related services for a defined time period. BHCC would retain a small team to manage the contract with the selected supplier. This offers the potential to enter into a long- term strategic partnership between the public and private sectors.

The strategic partner may be able to provide all services or may be responsible for procuring some or all services from other sources whilst retaining overall responsibility for service delivery and integration of the supply chain.

This arrangement requires a long-term commitment between the parties.

3.2.2 Advantages

The advantages of a Single Provider option are:

- Commercial and performance service risk can be passed to private sector
- Easy to administer with one point of responsibility for all disciplines
- Ability to develop a consistent “brand” for customers and stakeholders
- Maximises ability to develop long-term collaborative relationships with selected supplier and customer/ other stakeholders
- No ongoing tender costs
- Engages private sector and allows access to skills
- Maximises ability to deliver an integrated service and consistent approach to service delivery
- Likely to be attractive to private sector, medium sized contractors, with long timeframe and extent of workload, maximising opportunity for cost savings and competitive pricing.

3.2.3 Disadvantages

The disadvantages of a Single Provider option are:

- Potential for “cosy” relationship to develop with resulting issues of probity
- Majority of knowledge transferred out of authority
- Possibility of being “stuck” with inappropriate supplier for duration of contract period
- Difficult to terminate unsatisfactory performance without causing major disruption to delivery of whole service
- At renewal if a new supplier is selected not all staff may wish to transfer to new employer resulting in loss of retained knowledge
- No ongoing competition between suppliers. Requirement to implement robust measurement performance regime
- Risk of incorrect specification / definition of service leading to potential for claims in the event of change in service requirements

3.3 Using another Authority’s supplier

An option would be to use **another Authority’s supplier**, say East Sussex County Council, to provide the services in Brighton. This may be either for just the schemes or for the whole service.

The risk of being stuck as a secondary client for the supplier, with a supplier in place for the duration of the contract period, is a major concern. At the Contracts and Procurement Workshop on 15th June, it was expressed as a significant concern that the contracting party would be likely to get better service and prioritise their delivery over BHCC. BHCC has recent experience of this from Valley Gardens where procurement was through Hampshire County Council Framework. BHCC also have some unique authority challenges which are different to county authorities and would need to be accommodated by the supplier. This delivery model has therefore been discounted.

3.4 Multiple Provider

3.4.1 Arrangements

In a **Multiple Provider** model, the authority enters into a contract with multiple suppliers to deliver the various highways related maintenance services for a defined time period. The authority retains a team to manage the contract with the various suppliers. This offers the benefit of ensuring specialist organisations deliver the relevant discrete highway maintenance service element such as street lighting.

This arrangement is best served by a longer-term commitment between the parties and longer-term contract duration in order to make the investment worthwhile for the suppliers.

This is the current arrangement at BHCC for most of its highway services contracts, except Lot 1.

3.4.2 Advantages

The advantages of a multiple provider option are:

- Engages private sector and allows access to skills and resources
- Commercial and Service performance risks may be transferred to private sector
- Maximises ability to build long term collaborative relationships with selected suppliers and customer/ other stakeholders
- No ongoing tendering costs
- Likely to be attractive to specialist private sector with long time frame and repeat workload, maximising opportunity for cost savings and competitive pricing
- Unlikely to be “stuck” with inappropriate supplier for a particular service

3.4.3 Disadvantages

The disadvantages of a multiple provider option are:

- Some potential for “cosy” relationships to develop with resulting issues of probity
- Majority of knowledge transferred out of authority
- More difficult to administer with multiple points of responsibility for various disciplines
- Difficult to develop a consistent “brand” for customers and stakeholders
- Reduces the ability to deliver an integrated service and consistent approach to service delivery
- Difficult to terminate unsatisfactory performance without causing major disruption to delivery of a specialist service
- TUPE Regulations may be difficult to apply because of the “multiple” service provision
- No ongoing competition between suppliers. Requirement to implement robust measurement performance regime
- Risk of incorrect specification /definition of service leading to potential for claims in the event of change in service requirements

3.5 Framework

3.5.1 Arrangements

Under a **framework** option, the authority enters into a series of framework contracts for the provision of particular services. The frameworks may cover individual disciplines, e.g. surface dressing, or may include a

number of bundled disciplines, e.g. multi-discipline design services. Frameworks can be single supplier frameworks or include 3 or more suppliers. The maximum duration of a framework under European Union Regulations is 4 years. However, Transport for London has recently let four framework contracts for an 8-year period based on appropriate advice and Highways England are currently letting 15-year contracts.

This is the current arrangement at BHCC for Lot 1.

3.5.2 Advantages

The advantages of a framework option are:

- Ability to access “best in class” suppliers in specialised disciplines
- Flexibility of choice of suppliers
- Ability to deal with peaks and troughs in workload – workload risk with private sector
- Ability to benchmark suppliers against one another and drive continuous improvement
- Potential for steady workload can lead to reduction in prices from market

3.5.3 Disadvantages

The disadvantages of a framework option are:

- Maximum duration is typically 4 years, without extensions
- Requires significant management by the authority
- Co-ordination can lead to gaps and overlaps in service
- Suppliers may lose interest if work volumes through frameworks are small and or unpredictable
- May lead to loss of in-house skills
- Less opportunity to build up collaborative relationships with multiple suppliers
- Possibility of “learning curve” for each commission

3.6 Alliance

An **alliance** contract is an agreement where the client and its supply chain agree to act in good faith and to collaborate to achieve a common goal. The client and its supply chain share in the success or failure of the project. Alliancing refers to the legal/commercial relationship between suppliers - designers and contractors - referred to as “non-owner participants” (NOPs) with the employer/client (referred to as “owner participant”) for the design, construction and maintenance of a project where there are varying levels of collaboration and risk sharing.

The key characteristics of an alliance are:

- Integration – project teams are integrated, rather than as currently the contractor being under supervision of a client
- One Voice – a joint governance framework is agreed whereby one representative acts for each entity – decisions are made together that are “best-for-project” with value for money always being a key objective
- One Outcome – the parties succeed or fail together and typically share the risks equally between them. There is a “no blame” culture with parties not permitted to litigate, with the NOPs either receiving a “gainshare” or “painshare” depending on performance.

The client retains the majority of the risk for delivery of the project, as payment to the NOPs is made on a cost-plus basis until the Target-Outturn-Cost is reached (i.e. the contract sum). This means that, in some cases, the NOPs may be fully reimbursed for all their costs, despite a project finishing late.

To date, BHCC's preference has been an owner to contractor relationship, and this is something BHCC would like to retain and have found to deliver value for money. There is little certainty around the target-outturn-cost approach and, whilst current year budgets are known, future years are not known. Therefore, trying to set a Target-Outturn-Cost could be challenging, given the known pipeline of work, but spend per annum does appear relatively consistent and a mechanism could be introduced to manage this arrangement.

The budgets for BHCC are significantly less than that for other UK alliances. A test of market appetite alongside planned market engagement as to whether the Tier 2/3 Contractors would be comfortable and want to work under an alliance contract with BHCC would be an important step if this were considered appropriate.

An effective alliance would need a much more consistent internal approach in BHCC than was identifiable from the review undertaken in Phase 1. Authorities entering alliances are typically assessed at Programme Maturity Level 3 or greater, that is, they have centrally coordinated processes and procedures and these are applied consistently to programmes and to individual projects. Whilst actions are underway in BHCC to improve collaboration and drive consistency internally, this will take some time to embed effectively, and significant training investment may be needed to develop the programme maturity needed for an alliance arrangement to operate successfully.

As to form of alliance contracts, there are several:

- the FAC-1 Framework Alliance Contract;
- the JCT Constructing Excellence Contract 2016;
- the NEC4 Alliance Contract;
- the PPC2000 Project Partnering Contract; and
- the TAC-1 (Term Alliance Contract).

This option has been discounted due to a recognised strong preference in BHCC for a client-managed relationship to drive value for money; the identified need for better internal collaboration and consistency to be able to effectively manage existing arrangements; the likely need for training and upskilling BHCCs resources to improve organisational Programme Maturity to reflect the level of expertise needed to manage an alliance; and the lack of perceived appetite in the supply chain for an alliance of this scale (other alliances are typically significantly greater in scale). The budgets for BHCC are significantly less than that for other UK alliances. A test of market appetite alongside planned market engagement as to whether the Tier 2/3 Contractors would be comfortable and want to work under an alliance contract with BHCC would be an important step if this were considered appropriate.

3.7 Joint Venture

A **joint venture model** is distinct from the consortium arrangement in that it involves entering into an agreement with the private sector. A joint venture describes a range of different commercial arrangements between two or more organisations but, in this context, it is a situation whereby the entities create a joint venture company with its own separate legal identity. The joint venture company then enters into a contract for the provision of the services with the local authority.

The shares in the joint venture company can be held in any proportion but are generally held in proportion to each shareholder's investment. A shareholder may, however, have preferential rights attached to its share.

Joint venture arrangements are typically used for the purpose of optimising an operation's potential by investing a resource that otherwise would not be available, such as start up or expansion capital. Within the local authority marketplace, this model is likely to suit an arrangement where there is a need for investment in assets, the development of land and/or buildings and/or the provision and delivery of services.

As profit will be made through the joint venture, the new company must be limited by shares. This arrangement is easily understood by the private sector and a company limited by shares is a much simpler structure to enable a change in participants, since a withdrawing or retiring participant can simply transfer its shares to those who remain or to potential new participants.

A joint venture will have its own legal capacity, separate from its original stakeholders. Consequently, this allows the joint venture to own and deal in assets, employ people and enter into contracts in its own right. The duration can continue beyond the contract period thus providing the basis of a long-term partnership. Joint ventures create wealth based on the performance of its operations and this wealth can be realised through the disposal of shares.

This option has been ruled out due to the lack of public accountability and the lack of an attractive offering for these contracts for private sector investment or ability to control their own destiny.

3.8 In-house with Top-up

3.8.1 Arrangements

In an '**In-house with Top-up**' model, the authority delivers certain elements of the highway services in-house and procures other elements of the service via contracts with external organisations, whether it is a single service area or multiple service areas. The amount and type of support procured from the external organisations may be defined as a percentage split of work but perhaps more commonly by type of work.

3.8.2 Advantages

The advantages of an 'in-house and top-up' arrangements are:

- Ability to externalise those elements of the service that are "failing" or would be better provided by another organisation
- Some access to external service suppliers' skills
- Some opportunity to benchmark performance between service suppliers
- Some risk transfer for service quality and finances to private sector (but only in areas externalised)
- Utilisation of specific private sector skills to complement in-house resources
- In-house knowledge substantially retained

3.8.3 Disadvantages

The disadvantages of an 'in-house and top-up' arrangements are:

- Limited flexibility in the event of budget / workload changes
- Potential lack of clarity in roles and responsibilities between parties
- Lack of co-ordination of services and potentially an inconsistent "brand" / point of responsibility to customers and stakeholders
- Potential lack of clarity in which elements are to be externalised and why
- Limited risk transfer to the private sector
- Depending on nature and size of workload may be unattractive to private sector
- Impact of private sector on majority of services would be limited
- Limited opportunity to develop partnership working with the private sector and multi-party delivery may inhibit partnership with community and other agencies

3.9 Teckal Option

3.9.1 Arrangements

The 'Teckal' option (named after a particular legal case) consists of the establishment of a wholly-owned public sector company that is able to provide services for public sector bodies and is exempt from procurement regulations.

There are a number of rules which apply if Teckal status is to be achieved:

- The local authority exercises a control similar to that which it exercises over its own departments
- The exercise must be a power of decisive influence over both strategic objects and significant decisions of the company
- The principal part of its activities must be undertaken with the authority and any other activities must have no more than marginal significance

The Teckal Exemption still applies even where multiple contracting authorities share the control over the proposed service providing that the constitution gives decisive influence to the public sector owners acting together. This must include the ability to determine the strategic objectives and significant decisions of the company, with any proposal to move outside an agreed business plan being referred back to the members. The participating authorities must each have the opportunity to appoint a representative to the board.

3.9.2 Advantages

The advantages of the 'Teckal' option are:

- Ability to enter into shared services arrangements with other authorities and continue to market test for the life of the arrangement (unlikely to be realised given neighbouring authorities' existing approaches)
- As a wholly owned company local authority Members can easily remain actively engaged
- The councils have flexibility in the way that works are allocated without being concerned about contractual rights. This would not necessarily be the case where services are delivered through external suppliers.
- All profits are returned to the council in the form of dividend or rebate which allows the council to reinvest in other services. Although good value must be demonstrated, open advertising and tendering rules for public contracts do not apply, resulting in procurement savings.
- The arrangement is relatively straight forward and quick to create.
- Can add further services at a future point in time, provided the company is structured to take advantage of the Teckal exemption.
- Commercial focus but not sole motive.
- Agile - ability to rapidly respond to reduced budgets or changing priorities and be flexible, without financial penalty or commercial renegotiation.
- Strong alignment with vision and priorities of parent authority.
- Greater ability to align Terms and Conditions to reflect market forces
- Significant time and financial savings in procurement.

3.9.3 Disadvantages

The disadvantages of the 'Teckal' option are:

- Unfamiliarity with the potential arrangement - insufficient skills and experience within BHCC to set up and operate the Teckal arrangement

- Lack of resource/funding to establish the arrangement
- Lack of suitability of existing systems to accommodate changes
- Limited influence from private sector
- little access to innovative practices /up to date practice of private sector
- Difficulties in retaining specialist resources and skills for "occasional" services.
- No transfer of the risk for service quality and financial performance to the private sector.
- Limited opportunities to enter into shared services arrangements with neighbouring authorities, given their existing arrangements
- There is a clear limit on pursuing external commercial activities.

3.10 In-House

3.10.1 Arrangements

Local authorities have traditionally delivered services via "In-House" teams. Although many authorities have externalised services to a greater or lesser degree in recent years, some authorities continue with the '**In-house approach**'.

This model allows for internal provision of the highway services by the authority and staff remaining within the employment of the authority.

3.10.2 Advantages

The advantages of In-house arrangements are:

- Authority exercises total control over provision of service – ability to co-ordinate service provision
- Single point of responsibility for service delivery
- Consistent "brand" and point of contact for customers /stakeholders
- All knowledge relating to highways is retained In-house
- Familiarity with process is built up and retained
- Appreciation of corporate objectives and political decision-making process by managers and staff
- Consistent approach to delivery of services
- Minimal requirement to manage external interfaces and administer contracts
- Generally, no requirement to tender the services.

3.10.3 Disadvantages

The disadvantages of In-house arrangements are:

- Lack of flexibility to deal with workload / budget fluctuations and changing future service requirements
- Lack of a diverse supply chain typically found in the private sector
- Difficulties in retaining specialist resources and skills for "occasional" services
- Lack of external competition and commercial expertise of private sector
- Less ability to protect long term interests of staff in event of budget fluctuations / changes in practice
- Limited access to innovative practices / up to date practice of private sector
- Little opportunity to develop relationships with external organisations

- External contracts, when required, will require tendering and are unlikely to be attractive to private sector without premium rates
- Ongoing staff recruitment, retention and absenteeism issues for local authority
- No transfer of the risk for service quality and financial performance to the private sector.

In authorities such as BHCC, where a degree of outsourcing has been adopted, moving to in-house arrangements has additional risks of recruitment, upskilling and training to be able to provide continuity of service. Whilst TUPE arrangements in theory enable transfer of resources to the authority, in practice resources can choose to stay with their current employer and are often part of a supplier's supply chain, rather than a direct employee.

3.11 Discussion and Recommendation

The lack of an investible need for capital to create new assets, or create a step change in asset quality, make both **Private Finance** and **Joint Venture** options unlikely to attract interest and hence these models have been discounted.

The risk of **Single Provider** for all highways services is not palatable to BHCC. This is the approach in neighbouring East Sussex County Council, but in that instance the level of investment and network size are both much greater. The option of using another Authority's supplier as a single provider is also unpalatable to BHCC. The possibility of being "stuck" with an inappropriate supplier for duration of contract period on a smaller but important network is a concern voiced by several officers at BHCC and considered high risk, i.e. the poor relation syndrome. Therefore, both routes to this option have been discounted.

An **In-House** arrangement presents real challenges in how to deal with workload and budget fluctuations. BHCC has been fairly consistent in spend over the past three years; however, its investment need is expected to increase to maintain a previously stable asset which is starting to decline in quality and residual life over recent times. Over the next decade the expansion of active travel, change in vehicle fleet to low emission vehicles and need for electrical charging points, together with changes anticipated to accommodate autonomous vehicles are significant. This will need new specialist resources and true innovation which is readily available in the private sector to help overcome these new challenges and bring best practice globally to BHCC. BHCC has ongoing challenges with staff recruitment, retention and absenteeism all of which point to this arrangement, and likewise the **Teckal** arrangement, not being a good fit.

An **Alliance** option has been discounted due to a recognised strong preference in BHCC for a client-managed relationship to drive value for money; the identified need for better internal collaboration and consistency to be able to effectively manage existing arrangements; the likely need for training and upskilling BHCCs resources to improve organisation Programme Maturity to reflect the level of expertise needed to manage an alliance; and the lack of perceived appetite in the supply chain for an alliance of this scale (other alliances are typically significantly greater in scale). The budgets for BHCC are significantly less than that for other UK alliances. A test of market appetite alongside planned market engagement as to whether the Tier 2/3 Contractors would be comfortable and want to work under an alliance contract with BHCC would be an important step if this were considered appropriate.

The difference between **In-house with top-up** and **Multiple Provider** options is not significant. Arguably, the current arrangement with inspections undertaken and works details being developed in-house already exploits the **In-house with top-up** delivery model to some degree. Therefore, the challenge is in what and how to outsource to bring the best of the Private Sector forward to work with BHCC.

The **Multiple Provider** delivery model will remain in place for:

- Street Lighting
- Traffic Signals

It is recommended that this **Multiple Provider** delivery model should also encompass:

- Medium Works and Improvements (Lot i)
- Highways Safety Maintenance, Operations and Small Works (Lot ii)
- Lining Works for Parking Enforcement (Lot iii); and
- Asset Management Systems provision (To replace existing systems providers Yotta and Symology)

The rationale behind the recommendation for these services is:

- Medium Value Works and Improvements (Lot i) – Such schemes by their nature are varied in type, volume and timing and therefore better suited to the private sector. It is typically outsourced by most authorities in the UK. Currently Works and Improvements construction is provided through Lot 1 of the Framework. Seeking 3 suppliers with the ability to use both single source and competitive options for works schemes enables a degree of competition to be maintained through the life of the contract, in addition to the competition to secure a place on the framework.
- Highways Safety Maintenance, Operations and Small Works (Lot ii) – Day-to-day Highway Safety Maintenance and Operations – BHCC has statutory duty to maintain the highway and repair defects within short turn-around times. Currently, this is provided through Lot 2 of the Framework and this has been outsourced for over 20 years.
- Lining Works for Parking Enforcement (Lot iii) – Parking revenue is extremely significant for BHCC and well-maintained and statutorily compliant white and yellow lines are crucial to obtaining revenue collection and to support enforcement where needed. The expected volume of work does not seem adequate to support multiple suppliers, therefore a single quality supplier is needed to ensure maintenance of this significant revenue stream.
- Asset Management Systems – BHCC does not have the ability in-house and the majority of local authorities either procure this themselves or through one or more of their existing service providers. By procuring this themselves, BHCC maintain control over the systems and their functionality and can better manage their other suppliers through these, rather than if these were procured and controlled through one or more of its existing service providers.
- The outsourced suppliers all support other local authority contracts and since BHCC does not hold labour with the skills, plant and equipment in house, in-sourcing would be a significant risk.

The packaging underlying these recommendations is discussed further in section 4 of this report.

4. Packaging Options

4.1 Packaging options under a new Framework / Contracts

A workshop was held with BHCC staff to consider packaging options.

It was agreed at the outset that the following should be considered constraints:

- Street Lighting will continue under current contract with Colas
- Traffic Signals will continue under current contract with Siemens.

The associated highway asset management and works order systems are provided by a mixture of direct procurement to BHCC and indirectly through the existing service provider on contracts. This current arrangement has proven problematic. There is no 'single source of the truth' in the systems and BHCC are not able to tailor reporting to meet their needs. Therefore, there is a strong preference for BHCC to obtain and licence systems which the suppliers under the replacement contracts will all be required to use. This was taken as a further constraint to enable BHCC to better monitor and agree key performance indicators based on system records with their suppliers in the future.

The conclusion of the packaging workshop is presented in the Table 4.2.1 below.

Attribute	Lot i) Medium Works and Improvements	Lot ii) Highways Safety Maintenance & Operations and Small Works	Lot iii) Lining Works for Parking Enforcement	Systems lot or separate procurement
Works and Improvements	X	X (Small Works)		
Highways Safety Maintenance and Operations	X (of area of any TM)	X (Except within TM for Medium Works and Improvements)		
Drainage gully cleansing and maintenance	X (of area of any TM)	X (Except TM for Medium Works and Improvements)		
Lining	X (For scheme)	X (Where necessary for repairs it undertakes)	X (For parking enforcement)	
Street Lighting	Not Applicable ^{*1}	Not Applicable ^{*1}		
Traffic Signals	Not Applicable ^{*1}	Not Applicable ^{*1}		
Systems	Not Applicable ^{*2}	Not Applicable ^{*2}	Not Applicable ^{*2}	X
Major Projects	X			
Structures	X			
Coastal	X			
Depot provision	X (Option)			
Depot FM		X (Option)		
Winter Service		X (Option)		

Notes:

^{*1} - Contracts to require liaison with and include mechanisms for notifying and seeking support from Street Lighting and Traffic Signals contracts as appropriate (this may be indirect or direct and will be explored during drafting)

^{*2} - Contracts will include obligations for Suppliers to populate the systems with details as appropriate (to be explored and defined during drafting)

The workshop saw merits in including as many complementary disciplines as possible in the Medium Works and Improvements (Lot i). There was considerable debate around lining, and the quality of delivery needed to enable enforcement by the Parking department is a key concern. Although a common specification will be included in all contracts, a separate lot is to be made available to Parking department only, for remedial works for enforcement. Lining falling within Medium Works and Improvements, or Highways Safety Maintenance and Operations and Small Works, will be undertaken by the contractors for each of those lots as appropriate.

In terms of number of suppliers anticipated, the requirement derived from discussions at the workshop is:

Medium Value Works and Improvements (Lot i) – up to 3 suppliers

Highways Safety Maintenance, Operations and Small Works (Lot ii) – single supplier

Lining Works for Parking Enforcement (Lot iii) – single supplier

(Note this naming is derived from analysis in Section 7 below)

5. Is the Market ready?

During feedback sessions to review current performance, existing Lot 1 service providers, Edburton and RJ Dance, expressed interest in bidding for the next generation Works Framework (Lot i). RJ Dance is also keen to bid for the Highway Safety Maintenance (Lot ii).

The potential contractors indicated in Table 5.1 below are either existing service providers to BHCC (Table 5.1 a), regionally known suppliers, or those who have directly contacted BHCC (Table 5.1 b). At the initial Contract Workshop, each contractor's ability to perform the proposed different services was explored to gain the benefit of the knowledge and understanding in the room. This is summarised in Table 5.1 below where an 'X' indicates an existing service provider is thought by those at the Contracts and Procurement workshop on 15th June 2021 to have that capability.

Element	Existing service suppliers' understood capabilities							
	Edburton	RJ Dance	FM Conway	Hi Way Services	Colas	Siemens	Yotta	Symology
Small and Medium Works	X	X	X		X			
Highways Safety Maintenance and Operations	X	X	X		X			
Drainage cleansing	X	X	X		X			
Lining	X	X	X	X	X			
Street Lighting	X	X	X		X			
Traffic Signals						X		
Systems Databases	X	X	X		X		X	X
Major Projects			X		X			
Structures	X	X	X		X			
Coastal	X	X	X		X			
Depot Construction			X		X			
Depot FM	X	X	X		X			
Winter Service		X	X		X			

Table 5.1 a) Existing BHCC service suppliers understood capabilities

Element	Potential new suppliers' capabilities			
	Dyer and Butler	Dean & Dyball	Roadway	Landbuild
Small and Medium Works	X	X	X	X
Highways Safety Maintenance and Operations			X	
Drainage cleansing	X	X	X	X
Lining	X	X	X	X
Street Lighting				
Traffic Signals				
Systems Databases	X	X	X	X
Major Projects	X	X		
Structures	X	X		
Coastal	X	X		
Depot Construction	X	X		
Depot FM				
Winter Service				

Table 5.1 b) Potential new suppliers' understood capabilities

It is not clear whether suppliers would be keen to bid for Winter Service provision, particularly if this requires provision of new equipment, nor whether they would find the depot of benefit. It is recommended, as part of the procurement process initial market engagement, to include a standard questionnaire to validate appetite and the proposed approach, and to seek any guidance on potential alternative approaches which may better suit the market.

6. Contract Approach

6.1 NEC Framework Contract

BHCC have decided, as a council, that the New Engineering Contract (NEC) suite of contracts should be its default form for most engineering procurement. The City Transport Department are aware that their resources will need training to get the best out of NEC. Framework Manager(s) will need to be appointed to ensure consistency of approach.

NEC4 has some distinct differences from NEC3 in terms of terminology, introduction of deemed acceptance of the programme and assessments for payment, if the project manager fails to respond, the option to add to the list of compensation events (CEs), and a new CE to compensate the contractor for its cost in preparing quotations that are not accepted/instructed. In summary, there are some benefits and some dis-benefits for NEC4 over NEC3 from a client's perspective. The NEC suite can be burdensome to administer, due to its principal to resolve issues as they arise rather than wait until the end to resolve issues and creating an audit trail of such resolution. On the other hand, resolving issues whilst they are fresh is more efficient and leaves the Parties free to focus on current events and future risks. It is understood that BHCC, as a council, are adopting NEC4 and therefore it is the right form of contract for use by the City Transport Department.

The NEC4 Framework Contract (FC) is typically used for the appointment of a supplier or suppliers to carry out a diverse range of works, services, and supply on an 'as instructed' or 'completed' basis over a set term.

The NEC4 Framework Contract is the recommended head contract and recommended to sit over all lots (as is currently the situations under NEC3 for Lots 1 and 2).

A Framework Contract is based upon long-term (more than three years) relationships that involved extensive selection requirements to determine the desired supplier or suppliers. **The selection of the right supplier is essential, and it is recommended this is accomplished through using the Restricted Procedure under the Public Contracts Regulations.**

The Restricted Procedure comprises a two-stage process:

- Suppliers first need to pass a pre-qualification process, this is a backwards looking questionnaire to demonstrate capability (skills, capacity, and qualifications) and allows short-listing;
- In the second stage, suppliers passing pre-qualification are invited to respond to an Invitation to Tender.

6.2 Engineering Construction Contract (ECC) / Engineering and Construction Short Contract (ECSC)

Most of the main forms of NEC4 Contract can sit under the head NEC4 Framework Contract. For Schemes, either the NEC4 Engineering and Construction Contract (ECC) or the simpler NEC Engineering and Construction Short Contract (ECSC) are likely to be appropriate, depending on the scope of works and risks involved.

The ECC is used for the appointment of a contractor for engineering and construction work, including any level of design responsibility.

The ECSC is used for the appointment of a contractor for engineering and construction work, but it is intended for simpler contracts than the ECC, i.e. those which do not require sophisticated project management controls, are lower risk, and have a lesser need for the full set of contract remedies provided in the ECC. It will be appropriate for a number of Schemes for BHCC.

Under the ECC and ECSC (or Term Services Contract (TSC) or Term Services Short Contract (TSSC), as discussed in Section 6.3), the Contractor is responsible for the quality of their workmanship; however, under the ECC, the Client has the safeguard of engaging a Supervisor, whose role is to verify that the materials and workmanship

meet the contracted quality levels. This will be an important consideration for BHCC in deciding which option to use.

It is recommended both the ECC and ECSC options are included for Schemes, which is currently the situation under the existing Lot 1 contract.

Under the NEC4 suite of contracts there is also a Design, Build and Operate (DBO) contract available. In a DBO contract, a single Contractor acts as the sole point of responsibility to the Client for the design, management, and delivery of a project, on time, within budget and usually in accordance with a performance specification. If the Client requires the Contractor to self-certify the quality of the works, the Supervisor becomes a function of the Contractor. It is understood that BHCC wish to procure the design through a separate Professional Services Contract (PSC), or BHCC will deliver any design work in-house. Therefore, the use of design-build under ECC and ECSC and the DBO variants have been discounted. However, parameters can be included to enable it under the ECC.

6.3 Term Services Contract (TSC) / Term Services Short Contract (TSSC)

The Term Services Contract (TSC) is typically used to appoint a supplier to manage or provide readily definable services using task orders awarded as needed during a defined service period. Its use includes providing a service to a client's existing building, such as facilities management, or highway maintenance or providing services within an existing asset such as planned and unplanned maintenance. It is typically used to maintain an asset with only a modest amount of improvement or "betterment" through renewal or replacement whether the renewal or replacement is part of the expected service or the subject of a task order.

The TSC addresses workmanship issues using the defects mechanisms found in ECC/ECSC but it does not have express provisions for weather risk, physical conditions risk, or certain other construction related risks addressed by the ECC/ECSC. These risks can be addressed in part by defining additional compensation events, but without benefit of the nuanced risk attribution and dedicated project control mechanisms available in the ECC/ECSC. Its use for works must be with caution and understanding that the client retains these risks.

The TSC is, however, ideally suited for Winter Service and Depot Facilities management, which can be defined clearly. Some elements of Highway Safety Maintenance and Operations (Lot ii), such as CAT 1 and CAT 2 Defect repairs and small works, sit better under an ECC/ECSC. Of the priced contract options, the TSC offers only Main Option A (Priced contract with Price List) and Option C (Target Contract with Price List), favouring a clearly defined scope with little or no remeasurement. Where scope cannot be defined in advance, Option E (Cost Reimbursable) is envisaged.

A mix of TSC for service elements and ECC/ECSC for works elements given the proposed addition of Small Works to Lot ii) would be beneficial.

The current TSC contract for Lot 2 is based on the Highways Maintenance and Efficiency Programme (HMEP), discussed below. It is recommended that the next generation contract review if it remains current and update as required, also considering latest guidance such as the Construction Playbook, which will apply to all lots.

The Highways Maintenance Efficiency Programme (HMEP) was a sector-led transformation initiative that sought to maximise returns from investment and deliver efficiencies in highway maintenance services. The Programme started in April 2011 with sponsorship from the Department for Transport and was intended to run until 2018.

As a transformation initiative, HMEP targeted ways that local highway authorities conduct their business. It sought to deliver efficiency savings through:

- Collaboration and change – considering how alliances between authorities, clients and suppliers can be formed to drive efficiencies in delivery and changes in business processes, for example by applying LEAN thinking to the processes behind service delivery;

- Procurement, contracting and standardisation – guidance of procurement routes (See section 3 in this report) and provision of tools so that efficiencies can arise through use of for example a standard form of contract and highway maintenance specification;
- Asset Management – guidance for simplistic and, where appropriate more complex, lifecycle planning to determine whole life asset costs; and
- Benchmarking and performance – collecting, sharing, and comparing performance data on Customer/Quality/Cost.

The Lining Works for Parking Enforcement (Lot iii) could be procured through the ECC form. A copy of the current contract and specification is awaited to be able to consider an optimum approach, as this contract has been reported to be working very well for BHCC.

6.4 Key Procurement Considerations

The considerations set out below are key contract clauses which could be included, depending on whether an ECC or TSC contract (not the short forms) is being used to meet BHCC objectives summarised earlier.

6.4.1 Multiparty Collaboration

Option X12 enables clients to move away from reliance on traditional contracts, to include various collaborative and partnering arrangement which provide better integration of design, construction and operation functions across a single scheme, or a programme of works. Suppliers can be collectively incentivised to achieve project objectives by the use of this Option. It should be noted that Option X12 creates an arrangement, not a multi-party contract.

Linking Option X12 to the appropriate bi-party contracts allows for collaboration across a number of contracts (for example PSC Design, ECC Construction, TSC Street Lighting). The model allows creation of a Core Group to work together to achieve the Client's Objectives, which are captured in Option X12. It allows for individual or collective incentivisation through provision of KPIs. It has some merit in consideration for the Medium Value Works and Improvements (Lot i).

6.4.2 Incentivisation

There are a range of measures that affect the time, quality, and cost aspects of delivery and which can be used to incentivise the right behaviours:

- Target cost (ECC/TSC Option C and ECC Option D) which provides a pain / gain arrangement
- Bonus for early Completion (ECC Option X6) provides a bonus for each day the supplier completed the works ahead of the contractual Completion Date
- KPIs (ECC/TSC Option X12 or X20) can be introduced through either of the secondary options, examples include the number of Defects, the total project costs, rate of progress, client satisfaction levels, sustainability or environmental targets, etc
- Value engineering (clause 16) incentivises the supplier to make proposals to reduce the cost of providing the Works (ECC, ECSC) or Service (TSC). The parties both benefit if a proposal is accepted.
- Whole life cost (ECC/TSC Option X21) provides an incentive to the supplier to make proposals which reduce the cost of operating and maintaining an asset.

6.4.3 Key Performance Indicators (KPIs)

NEC provides KPIs through Option X12 or X20. Both Options cannot be used concurrently: it is one or the other. Option X12 is with Multiparty collaboration (See 6.4.1) where Option X20 applies to a single Contractor.

Continuous improvement and innovation are the objectives of KPI with the ultimate aims of reducing costs and improving quality. It is essential to identify and describe KPIs, including achievement criteria at the outset in the tender documents. These must then be measured during delivery to be effective.

Clearly, an optimum number of incentives is needed, enough to make a difference, but not too many that reporting becomes burdensome and potentially compromises BHCC objectives.

6.4.4 Risk Management

NEC encourages active risk management which is essential for good project delivery. This relies upon risk being allocated to the party best able to manage it.

It is vital those developing schemes for Lot i) should prepare and share a risk register, with a particular Z Clause added to stipulate arrangements for its update and management during the works, to reflect all risks surrounding a given project. Consideration should be given as to which additional risks to transfer to the contractor, if they are better able to manage it for a given works package order or service task order. Managing of risks by both the client and contractor during delivery is a key aspect of the NEC Contract and not an issue to be overlooked. Timely engagement, meeting recording and actions are essential and the party responsible is often the client.

6.4.5 Early Contractor Involvement (ECI)

ECI is a method of appointing a Contractor or Subcontractor at an early stage, to help develop designs and proposals. ECI has many benefits, including early involvement of contractors and suppliers in the design, encouraging innovation, collaboration, design for off-site manufacture, whole life solutions, jointly reducing risk, planning resources, negotiation of price, and creating a sound business case.

There are three options available under the NEC for ECI:

- Use ECC Option C or E with Option X22 (early Contractor involvement).
- Place two or more contracts in sequence, use the PSC form for ECI prior to award under an ECC. This would require a PSC option under the Framework to apply for say Lot i) (Medium Value Works and Improvements).
- A combination of the two options highlighted above.

Key success factor is ensuring compliance with procurement regulations when engaging in ECI. This needs to be considered in the procurement of the Framework and allowed for if required. It could be beneficial for some schemes.

6.4.6 Information Modelling

ECC/TSC Option X10 allows for requirements for Information Modelling to be included within the contract. This is likely to be beneficial for Schemes, under the ECC, if not catered for in the design contracts through the PSC

6.5 ECC Main Options

The ECC Main Options are summarised in Table 6.5.1 below

	Main Option	Short Description
A	Priced contract with activity schedule	Lump Sum / payment against complete activities / price list
B	Priced contract with bill of quantities	Bill of quantities/ remeasurement
C	Target contract with activity schedule	Lump sum with agreed pain / gain share (range set in the Contract Data)

	Main Option	Short Description
D	Target contract with bill of quantities	Bill of quantities/ remeasurement with agreed pain / gain share (range set in the Contract Data)
E	Cost reimbursable contract	Cost reimbursable (however some costs may be disallowed depending on approach in the contract and Scope)
F	Management contract	Main Contractor appointed – client takes the risk of subcontract cost

A management contract is not appropriate for this situation. Main Options A to E all have their merits.

Option E puts a significant amount of risk with the client in terms of both cost outturn and programme. It has some merits for small value works and could be a suitable solution for the Highways Safety Maintenance and Operations (Lot ii).

The current approach is to use Option A for the existing Highway Safety Maintenance and Operations Lot 2 and Option A, B, C or D for the existing Schemes Lot 1 as appropriate. To incentivise better behaviour and outturn, there are some merits in moving projects where there is scope for Innovation and new efficiencies to Option C or D. When combined with ECI and an initial upfront target price agreed on basis of a standard approach there is merit in Options C and D becoming the default. An alternative and equally viable approach is to procure ECI through the PSC design contracts, where buildability expertise and construction know-how could be sought alongside traditional design delivery. The disbenefits of this is, however, that the contractors might not have the plant and equipment available for such an innovative approach and hence some kind of combination through ECI is likely to engender downstream benefits and economies the PSC route might not achieve.

A key decision for the Highways Safety Maintenance and Operations (Lot ii) is whether it should all be delivered as a service under the TSC, as works under an ECC or a mix with elements such as small works under an ECC. The ECC would allow more flexibility of Main Options, whereas the TSC would traditionally be solely Option A (albeit that the design of the Price List could resemble a Bill of Quantities but without the detailed remeasurement mechanisms). The current and HMEP documents are written around a TSC delivery approach. The TSC is ideally suited for Winter Service and Depot Facilities management, which can be defined clearly. Some elements of Highway Safety Maintenance and Operations (Lot ii), such as CAT 1 and CAT 2 Defect repairs and small works, sit better under an ECC/ECSC. Of the priced contract options, the TSC offers only Main Option A (Priced contract with Price List) and Option C (Target Contract with Price List), favouring a clearly defined scope with little or no remeasurement.

The Lining Works for Parking Enforcement (Lot iii) is ideally suited to either Option B or A under an ECC.

At the Contract and Procurement Workshop on 15th June, a strong desire was expressed for a Bill of Quantities based approach rather than Activity Schedule. This would require more effort to define the bill of quantities but would have the benefit of providing improved visibility through remeasurement. It does, however, also put the risk of outturn cost with the Client, whereas Option A is intended to place this with the Contractor. There is some merit in adopting Option B.

Option E (cost reimbursable) would require BHCC to review the real or actual costs of the contractors works and/or service. A target cost arrangement such as ECC option D (target contract with bill of quantities) could also be possible, to incentivise the client and contractor to collaborate with the contractor to minimise costs. Options E or D would require the Employer to pay on the basis of 'actual' costs which introduces the need for significant auditing as compared with the simpler priced option, which could as currently be procured under the TSC or TSC/ECC hybrid as described above. Unlike the ECC, the TSC does not include for either 'option D' or for a detailed definition of the contractor's cost. If the principle of paying the contractor based on actual cost is of interest to BHCC, these options could be further investigated. The expertise and management effort to review and audit the contractor's actual costs should not be underestimated. This would not be simple to manage.

7. Recommended Commercial and Procurement Approach

A key challenge for BHCC is maintaining enough resources available through the Highways Safety Maintenance and Operations (Lot ii) to provide the services when needed, and yet keep them busy on productive work for BHCC rather than on standby when not.

Current spend with the incumbent is a mix of Lot 1 and Lot 2 work totalling about £55K per month. During Jacobs' review of the existing service provider, RJ Dance advised they typically have 5 to 6 two-man gangs working on the current Lot 2 and bring in other teams as and when needed, managed by two Supervisors, one for civils works and one for pavement patching. These resources are likely to be subject to TUPE Regulations and appropriate notifications should be sent by BHCC to obtain details for all incumbent existing service providers where appropriate.

At the Contract and Procurement Workshop on 15th June 2021, the need for an amount of work to keep the Highways Safety Maintenance and Operations resources productive and available was acknowledged, and this was explored further at the Risk and Opportunities Workshop. There is the risk that the new Lot ii) supplier does not gain a position on Lot i).

To enable the supplier to have sufficient local resources available, it is therefore proposed to add in small value works and improvements (Small Works) to the Highways Safety Maintenance and Operations (Lot ii).

The Construction Playbook (UK Government Procurement Policy Note 09/20) encourages authorities to '*Review future projects and programmes regularly (at least quarterly) to identify opportunities to bring appropriate work together in portfolios and leverage economies of scale to drive investment into new technologies and MMC (Modern Methods of Construction)*'. Thus, the ability to compound a number of Small Works into a Medium Value works order is available to BHCC to manage workload through the lots.

7.1 Contract Strategy

From the analysis presented in section 3 of this report it is recommended that the **Multiple Provider** delivery model will remain in place for:

- Street Lighting
- Traffic Signals

The difference between **In-house with top-up** and **Multiple Provider** delivery models is not significant. Arguably, the current arrangement with inspections undertaken and works details being developed in-house already exploits the **In-house with top-up** delivery model to some degree. Therefore, the challenge is in what and how to outsource to bring the best of the Private Sector forward to work with BHCC.

It is further recommended that this **Multiple Provider** delivery model should also encompass:

- Medium Works and Improvements (Lot i)
- Highways Safety Maintenance, Operations and Small Works (Lot ii)
- Lining Works for Parking Enforcement (Lot iii); and
- Asset Management Systems provision (To replace existing systems providers Yotta and Symology)

The rationale behind the recommendation for these services is:

- Medium Value Works and Improvements (Lot i) – Such schemes by their nature are varied in type, volume and timing and therefore better suited to the private sector. It is typically outsourced by most authorities in the UK. Currently Works and Improvements construction is provided through Lot 1 of the Framework. Seeking 3 suppliers with the ability to use both single source and competitive options for works schemes

enables a degree of competition to be maintained through the life of the contract, in addition to the competition to secure a place on the framework.

- Highways Safety Maintenance, Operations and Small Works (Lot ii) – Day-to-day Highway Safety Maintenance and Operations – BHCC has statutory duty to maintain the highway and repair defects within short turn-around times. Currently, this is provided through Lot 2 of the Framework and this has been outsourced for over 20 years.
- Lining Works for Parking Enforcement (Lot iii) – Parking revenue is extremely significant for BHCC and well-maintained and statutorily compliant white and yellow lines are crucial to obtaining revenue collection and to support enforcement where needed. The expected volume of work does not seem adequate to support multiple suppliers, therefore a single quality supplier is needed to ensure maintenance of this significant revenue stream.
- Asset Management Systems – BHCC does not have the ability in-house and the majority of local authorities either procure this themselves or through one or more of their existing service providers. By procuring this themselves, BHCC maintain control over the systems and their functionality and can better manage their other suppliers through these, rather than if these were procured and controlled through one or more of its existing service providers.
- The outsourced suppliers all support other local authority contracts and since BHCC does not hold labour with the skills, plant, and equipment in house, in-sourcing would be a significant risk.

Based on the analysis presented in Sections 5 and 6, the following approach is recommended:

An NEC Framework Contract is the recommended head contract and recommended to sit over all lots.

Framework agreements have been widely used since their inclusion in the Public Contract Regulations and proven to demonstrate benefits in terms of administrative efficiency, at the risk of reduced competition if frameworks are too wide, too long, or cover a very large part of the public sector demand.

Three lots are proposed under the head contract, the NEC Framework Contract, being:

- Medium Value Works and Improvements (Lot i) – up to 3 suppliers
- Highways Safety Maintenance, Operations and Small Works (Lot ii) – single supplier
- Lining Works for Parking Enforcement (Lot iii) – single supplier

In addition, it is recommended that a Scope for Asset Management Systems is prepared and procured. This may be better under Supply terms or a NEC4 PSC Contract but it could otherwise form Lot iv) – Asset Management Systems. This should be confirmed through market testing with potential suppliers.

The proposed Contract Strategy is:

- Lots i) and iii) would both use the Engineering and Construction Contract (ECC), or the Engineering and Construction Short Contract (ECSC) where appropriate.
- Lot i) would be able to use ECC Main Options A to D with ability to add new items to a tendered Activity Schedule or Bill of Quantities or Price List (as applicable).
- Lot i) would have both Direct Award and Mini-Competition routes available, with the ability to procure Early Contractor Involvement.
- Lot ii) would be a mix of Term Service Contract (TSC) and ECC/ECSC. Modelling the works element on an ECC Option A/B basis (activity schedule (or price list) / bill of quantities) will create some commercial competition at Framework Tender.
- Lot iii) would suit an ECC Option B Bill of Quantities format with ability to add new items.
- Elements of Option E will need to be considered and incorporated through Z Clauses in all contracts to reflect change in service and works elements anticipated over the duration of the Contract.

Secondary options will be considered further by Jacobs in the Procurement Plan and will be derived through the contract drafting process. It is recommended that development of the Procurement Plan and contract drafting commences on the basis of the recommendations above and runs in parallel with market engagement and governance approvals.

7.2 Contract Durations

In terms of Contract durations, Highways England have been letting up to 15-year Maintenance and Response Contracts (for its equivalent of the Highways Safety Maintenance and Operations Lot 2/Lot ii) and its Works Frameworks are including for potential extensions (e.g.: 4 + 2 + 2). Transport for London has included similar potential contract durations.

New procurement policies are being published on a regular basis with an increased interest from Government following Brexit. Currently, UK regulations generally revoke and reinstate EU Regulations but some changes are impacting Public Sector procurement. A Summary of the Impact of new UK Procurement Regulations is included in Appendix A.

Regulations.33(7) to (11) of the Public Contracts Regulation 2015 (PCR2015) set out the specific rules for the call-off of contracts within a framework agreement. As regards to framework agreements concluded with a *single economic operator* by one or more contracting authorities (reg.33(7) PCR2015), the rules are restricted to requiring that contracts based on that agreement should be awarded within the limits of the terms laid down in the framework agreement. Therefore, the contracting authority or authorities will have substantial flexibility to set contractual terms adjusted to its or their specific needs and, if necessary, may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary. In this regard, it may be important to emphasise that such consultations and supplements of the tender should not result in a substantial amendment of the terms of the framework agreement (reg.33(6) PCR2015).

The rules applicable to framework agreements concluded with *several economic operators* suggest there should be at least three (by analogy with reg.65 PCR2015).

Regulation 33(3) of PCR2015 establishes that the term of a framework agreement shall not exceed 4 years, save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement, i.e., according to the specific technical or commercial characteristics of the goods, works or services included in the framework agreement. This rule seems to provide full discretion to contracting authorities for the conclusion of framework agreements of durations of up to four years, and to impose a higher obligation to prove the necessity to conclude agreements with a duration in excess of that period to ensure its feasibility from a technical, commercial or some other perspective.

Nonetheless, the discretion of the contracting authorities in determining the duration of these agreements must clearly be restricted by competition considerations [ex reg.18(1) PCR2015]. Therefore, even under the threshold of four years of duration, contracting authorities must set the validity of the agreement so as to avoid unnecessary restrictions and distortions of competition, based on a case by case analysis [along the same lines, S Arrowsmith, *The Law of Public and Utilities Procurement. Regulation in the EU and the UK*, Vol. 1, 3rd edn (London, Sweet & Maxwell, 2014) 1175–77.

The duration of the framework agreement can extend beyond the four year limit, given that the duration of the contracts awarded under the framework 'does not need to coincide with the duration of that framework agreement, but might, as appropriate, be shorter or longer' (rec 62 dir 2014/24).

Procurement Policy Note 09/20: The Construction Playbook states that '*The length and size of individual contracts should be designed for specific markets with suitable break points and clear contractual obligations to drive continuous improvement in safety, time, cost and quality. For example, 8 years of relatively certain work provided by a 4 + 4 contract (with an extension based on good performance) could deliver faster, better and greener delivery and improved outcomes when used appropriately.*'

It is recommended that a 4-year initial contract period with possible extensions arrangement (4 + 2 + 2) is adopted for all lots under the NEC4 Framework Agreement, extendable on the basis of good performance, with the ability to terminate any one or all lots at a break point, in addition to the standard termination requirements.

The Construction Playbook (UK Government Procurement Policy Note 09/20) encourages authorities to '*Review future projects and programmes regularly (at least quarterly) to identify opportunities to bring appropriate work together in portfolios and leverage economies of scale to drive investment into new technologies and MMC (Modern Methods of Construction)*'. Thus, the ability to compound a number of Small Works into a Medium Value works order is available to BHCC to manage workload through the lots.

7.3 Framework Management

It is recommended that a Framework Manager(s) is/are appointed to place governance on the operation of the contract(s), supplemented by individual Lot Managers and project managers under their direction as appropriate. (See Jacobs Highways Operation and Maintenance Review (Report Reference BESP/0033/REP/01))

7.4 Market Engagement

It is recommended that the delivery market is engaged to assist in the development of the contract to gauge appetite for this proposed approach and shape the contract to ensure sufficient response and attractiveness for a fair and competitive competition.

8. Other Recommendations and Next Steps

8.1 Recommendations

Recommendations are included within each section of this report and are not repeated here in detail but rather as bullet summaries. These individual recommendations have been consolidated into proposed tasks.

Phase 2, to develop a number of requirements for the future Highways Service Contract(s) and enable a more effective and robust service to be provided overall, can continue in parallel with Phase 3, development of the proposed Contract(s).

8.2 Proposed steps - Phase 3

To enable a swift transition into Phase 3, it will be important that details of all historic contracts, the tender documents, scope, contracts themselves and associated documentation are collated and shared. This will enable consideration of what can be adapted with minor changes and what needs to be drafted.

The proposed tasks for Phase 3 - To prepare the Contracts will as a minimum include:

- Improvement Plans for internal council approach
- Draft Contract Scopes (or Schedules)/ Works Information
- Design Payment / Commercial requirements
- Compile Contracts
- Prepare Business Base
- Prepare Dataroom/ Site Information
- PQQ Documentation and associated Evaluation Criteria
- Instructions to Tenderers documentation
- Tender evaluation criteria
- Tender processes and procedures
- Tender Administration including tender query and response assistance
- Tender Evaluation Moderation support
- Finalisation of documentation for Contract(s) Award

Appendix A. Impact of new UK Procurement Regulations

Update: this TN was originally prepared on 4 June 2021. It will need regular updating to reflect new publications. This advice is an understanding from a technical viewpoint of the situation and should be confirmed or otherwise

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A.1 Purpose

The purpose of this note is to provide a review of the new UK Procurement Regulations that are relevant to Phase 2 Task 1. Overarching Scope is 'Highways Maintenance and Operations support', but includes new projects (Civils, Design and potentially D&B) for small and medium value schemes. Such small and medium value schemes may include structures refurbishment/strengthening associated with coastal protection, highways, and car parks.

A.2 The legal landscape

Brighton and Hove District Council is a contracting authority and is required to comply with EU Procurement Directives embodied in the Public Contracts Regulations 2015 when buying works, goods or services from external organisations to ensure that all procurement is carried out in a fair, open and transparent way.

A.3 Public Contract Regulations 2015 (PCR 2015)

PCR 2015 came into force on 26 February 2015 and implements Directive 2014/24.

It enshrines EU procurement requirements into UK law and will remain in force for the foreseeable future with amendments where needed as a result of leaving the EU (e.g. above threshold contracts will need to be advertised on Find a Tender instead of OJEU).

PCR 2015 oblige public authorities to conduct procurement activity in an open and transparent manner. Tenders and contracts entered into without complying with PCR 2015 may result in the procurement exercise and subsequent contract being legally challenged by an aggrieved party. If challenged the courts have the power to automatically suspend the contract award, apply financial damages against the contracting entity, declare the contract ineffective and issue the contracting entity with an unlimited financial penalty. In addition, there may be delays, disruption/impact of services, reputational damage, further legal and business costs.

A.4 Changes to PCR 2015 due to Brexit

The Brexit transition period ended on 31 December 2020.

- The **Public Procurement (Amendment etc.) (EU Exit) Regulations 2019** repeal the Public Contracts Regulations 2015 but then immediately re-enact them on largely the same terms.

No 560: <https://www.legislation.gov.uk/ukxi/2019/560/part/3/chapter/1/made>

- The above regulations (NO 560) were revoked and replaced by **The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1319) (PPAR 2020)** which came into force at 11pm on 31 December 2020.

PPAR 2020: No 1319 : <https://www.legislation.gov.uk/uksi/2020/1319/contents/made>

- The PPAR 2020 also revoked and replaced **the Public Procurement (Amendment etc.) (EU Exit) (No.2) Regulations 2019** – in England, Wales, and Northern Ireland.

No 623: <https://www.legislation.gov.uk/uksi/2019/623/contents/made>

Changes have been limited to those that are appropriate to reflect UK's new status outside the EU and are made only to the extent permitted to correct deficiencies. Main changes for UK contracting authorities are as follows:

- UK contracting authorities will no longer publish in the OJEU but will instead use a UK e-notification service. Find a Tender Service (FTS) is the new UK e-notification service where notices for new procurements must now be published. It replaces OJEU / TED. <https://www.find-tender.service.gov.uk/Search>,
- the transfer of the European Commission's supervisory functions to the Cabinet Office, such as the transfer of the function to revalue the main financial thresholds,
- PPAR 2020 provide that procurement procedures and framework agreements commenced before 1 January 2021 but running beyond that date, will continue to be subject to the pre-2021 rules. This means that a two-tier system will be in place for some time, and
- financial thresholds will be expressed in pounds for those procurement commenced after 1 January 2021, the first set of thresholds are set out in the PPAR 2020 and resemble those previously applicable. The procurement thresholds will continue to be based on GPA thresholds.

Further details are in the explanatory memorandum for PPAR 2020 at:

<https://www.legislation.gov.uk/uksi/2020/1319/memorandum/contents>

- Withdrawal from Europe legislation:
 - The European Union (Withdrawal) Act 2018 (EUWA)
<https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>
 - European Union (Withdrawal Agreement) Act 2020 (WAA)
<https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>
 - UK-EU Withdrawal Agreement of January 2020 (Withdrawal Agreement).
https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement_en

A.5 Relationship with WTO GPA and UK-EU TCA

UK secured independent membership of the GPA, which came into force on 1st January 2021. The EU-UK Trade and Cooperation Agreement - Protecting the European Union's interests, ensuring fair competition, and continued cooperation in areas of mutual interest is on the following site:

https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en

Contracting authorities should familiarise themselves with the UK's commitments on public procurement at "Title VI (Public Procurement)" and "Annex PPROC-1: Public Procurement" of the TCA, which are summarised at Annex A from the UK point of view, although the provisions are to be applied mutually. The EU(FR)A provides that, to the extent that the TCA is not otherwise implemented, it will be read into existing domestic law - this effectively modifies existing domestic law as necessary to ensure the UK complies with its obligations under the TCA.

See: - **PPN 02/21** - The WTO GPA and the UK-EU TCA, a procurement policy note issued by the Cabinet Office.

A.6 Other legislation:

- Equality Act 2010
- Modern Slavery Act 2015
- Bribery Act 2010
- General Data Protection Regulations (GDPR)
- The Public Services (Social Value) Act 2012
- Freedom of Information Act 2000
- Late payment of Commercial Debts (Interest) Act 1998 and Regulations 2013

A.7 Policy Papers and Consultations on Public Procurement:

A.7.1 (5) (1) Cabinet Office:

The Cabinet Office has issued Procurement Policy Notes (PPNs) to support public sector organisations in preparing for the UK's exit from the EU, dealing with COVID, the Construction Playbook as well as launching a consultation into the future of public procurement.

<https://www.gov.uk/government/collections/procurement-policy-notes#2021>

List of procurement policy notes:

- PPN 02/19 - Preparing for the UK Leaving the EU
- PPN 06/19 - New Thresholds
- PPN 01/20 - Responding to COVID-19
- PPN 02/20 - supplier relief due to coronavirus (COVID-19)
- PPN 03/20 - Use of procurement cards - COVID-19
- PPN 04/20 - Recovery and Transition from COVID-19
- PPN 05/20 - The Outsourcing Playbook V2.0
- PPN 06/20 - taking account of social value in the award of central government contracts
- PPN 07/20 - Taking account of a bidder's approach to payment in the procurement of major government contracts
- PPN 08/20 - Introduction of Find a Tender
- PPN 09/20 - The Construction Playbook
- PPN 10/20 - Public Procurement after the Transition Period ends on 31 December 2020
- PPN 11/20 - Reserving Below Threshold Procurements
- PPN 01/21 - Procurement in an Emergency
- PPN 02/21 - The WTO GPA and the UK-EU TCA
- PPN 03/21 - The Sourcing and Consultancy Playbooks
- PPN 04/21 - Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing
- PPN 05/21 - Sets out information and guidance for contracting authorities on the National Procurement Policy Statement.

A.7.2 (5)(2) Green Paper – Transforming Public Procurement:

The Green Paper sets out the UK Government's future plans to amend the current public procurement regime, including integrating the current EU-derived suite of regulations into a single, uniform framework of simplified rules.

<https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

The government's goal is to speed up and simplify procurement processes.

This Green Paper consultation ran from 15 December 2020 to 11:45pm on 10 March 2021. "The government's goal is to speed up and simplify our procurement processes, place value for money at their heart, and unleash opportunities for small businesses, charities and social enterprises to innovate in public service delivery." Details on : <https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

The Government's future plans include:

- Proposals to enshrine in law the principles of public procurement: the public good, value for money, transparency, integrity, fair treatment of suppliers and non-discrimination.
- Intention to legislate to require contracting authorities to have regard to the Government's strategic priorities for public procurement in a new National Procurement Policy Statement.
- Proposal to establish a new unit to oversee public procurement with powers to review and if necessary, intervene to improve the commercial capability of contracting authorities.

It is understood that the timetable for implementing the proposals in the Green Paper (apart from the National Procurement Policy Statement) will be 2022.

A.7.3 5(3) National Procurement Policy Statement (NPPS)

This NPPS was published by the Cabinet Office via PPN 05/21. It sets out the strategic priorities for public procurement and how contracting authorities can support their delivery. The NPPS applies to contracting authorities as defined in section 39(3) and (4) of the Small Business Enterprise and Employment Act 2015. This includes local authorities. This relies in part on the definition in the Public Contract Regulations 2015 (S.I. 2015/102). PPN 05/21 has immediate effect and applies to all contracting authorities.

Link to the NPPS:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990289/National_Procurement_Policy_Statement.pdf

