

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Executive Member for Economy, Transport and Environment
<b>Date:</b>	2 December 2020
<b>Title:</b>	The Divestment of Skanska Infrastructure Services and Novation of Contracts
<b>Report From:</b>	Director of Economy, Transport and Environment

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### Purpose of this Report

1. The purpose of this report is to provide details of the proposed divestment of Skanska UK Ltd.'s Infrastructure Services division, and the implications this will have on existing contracts between Skanska UK Ltd and Hampshire County Council, specifically the Hampshire Highways Service Contract and the Generations 3 and 4 Civil Engineering framework contracts.

### Recommendations

2. That, subject to the successful completion of the due diligence process, the Executive Member for Economy, Transport and Environment delegates authority to the Director of Economy, Transport and Environment, in consultation with the Executive Member for Economy, Transport and Environment, to approve the Single Tender Award and enter into contractual arrangements for the novation of the Hampshire Highways Service Contract, the Gen 3-3 Civil Engineering, Highways and Transportation Infrastructure Works Framework contract 2016-2020 and the Gen 4-3 Civil Engineering, Highways and Collaborative Framework contract 2020-2024 to the new service provider.
3. That subject to the successful completion of the due diligence process, the Executive Member for Economy, Transport and Environment approves the novation of the Hampshire Highways Service Contract, the Gen 3-3 Civil Engineering, Highways and Transportation Infrastructure Works Framework contract 2016-2020 and the Gen 4-3 Civil Engineering, Highways and Transportation Collaborative Framework contract 2020-2024, as set out in this report, from Skanska Construction UK Ltd to the new service provider.

### Executive Summary

4. This paper seeks to
  - identify the reason why the novations of the contracts are required;
  - identify the legislation that facilitates the proposed novations;

- clarify the financial position of the Hampshire Highways Service Contract for the remainder of the contract duration; and
- note the positive collaboration developed with Skanska Construction UK Ltd and the need to continue with the new service provider.

### **Contextual information**

5. In February 2020 Skanska Construction UK Ltd announced that it was divesting the Infrastructure Services division within its organisation. Skanska Construction UK Ltd is currently the County Council's service provider for the Hampshire Highways Service Contract (highway maintenance) and is included in the Gen 3-3 Civil Engineering, Highways and Transportation Infrastructure Works Framework contract 2016-2020 and Gen 4-3 Civil Engineering, Highways and Transportation Collaborative Framework contract 2020-2024 (capital projects). Skanska Construction UK Ltd is currently in the process of procuring a buyer for its Infrastructure Services division and the name of its preferred bidder is not expected to be publicly announced until late December 2020 or early January 2021. It is anticipated that, providing the preferred bidder meets the necessary requirements of The Public Contract Regulations 2015, the contracts will be novated in the Spring of 2021.
6. These requests are being made in the context of the County Council's Contract Standing Orders and The Public Contract Regulations 2015 ("the Regulations"). Clause 9.5 of Contract Standing Orders states:  
  
*"Any proposed modifications to existing contracts which have not been provided for in the initial procurement documents in clear, precise and unequivocal review clauses shall be approved by the Head of Law and Governance and Monitoring Officer where the value of the modification is less than £1million and by the Executive where the value of the modification is £1million or greater prior to agreement of such modification."*
7. Under Regulation 72 (1) (d) (ii) of the Public Contract Regulations 2015 a public contract may be modified without a new procurement procedure where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of "universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this part".
8. Consequently, in circumstances where a public contract with a remaining value over £1million is proposed to be novated in accordance with Regulation 72 (1) (d) (ii), this shall be treated as a modification requiring approval from the Executive Member.
9. To ensure the novations are dealt with in a timely manner, to minimise the impact on payment to suppliers and to ensure the quality of the services are maintained, it is recommended that authority to approve the new service provider is delegated to the Director of Economy, Transport and Environment in consultation with the Executive Member for Economy, Transport and Environment.

## Finance

10. There are no financial implications of these proposals; the novations would not involve any additional spend or change to the duration of the contracts.
11. The remaining value of the Hampshire Highways Service Contract is as shown in the table below. The figure of £60m spend per year is a representative average figure from previous years of the contract.

From	To	Value
1 April 2021	30 April 2024 – minimum contract duration	£185 million (based on £60m spend per year)
1 April 2021	30 April 2029 – maximum contract duration	£485 million (based on £60m spend per year)

12. The Gen 3-3 & Gen 4-3 contracts are part of framework contract arrangements with contracts awarded on an individual project basis, which are competitively tendered. Finances are managed on an individual scheme basis. The only project Skanska Construction UK Ltd is currently delivering under these contracts is the M27 Junction 9 and Parkway South roundabout improvement, Whiteley.

## Performance

13. Since the County Council and Skanska Construction UK Ltd started working together the two organisations have formed a positive, collaborative relationship, under the 'Hampshire Highways' brand and this has developed over time to the benefit of highway services delivered right across the County.
14. It is vital that the collaborative momentum created to date is not lost as a consequence of the novations. An early assurance will therefore be sought from the new provider to continue the contract on a collaborative basis and to establish the same partnership ethos. The County Council will be working with the new service provider to quickly ensure all people, systems and processes are in place for a smooth transition and to ensure highway services are not negatively affected.

## Consultation and Equalities

15. Due to the nature of the approval sought for this report no consultation has been undertaken.
16. An Equalities Impact Assessment has been carried out as part of this report.

## **Other Key Issues**

17. As part of the approval for the proposed service provider, the proposed service provider will be required to undertake and fulfil the criteria for qualitative selection initially established for the procurement of the original contracts, as per Regulation 72 (1) (d) (ii) of the Public Contract Regulations 2015.
18. The due diligence process will include the following measures. The proposed service provider will need to satisfactorily complete the pre-qualification questionnaire (PQQ) that was initially established for the procurement of the original contracts. The PQQ for the Hampshire Highways Service Contract comprised of 60 questions across a variety of subjects to ensure the proposed service provider can deliver the service and fulfil the contract requirements. Meetings will also be held with the proposed service provider to establish how they plan to prepare and mobilise the contracts, and their intentions and aspirations for the delivering the contracts going forward.
19. If the proposed service provider meets the requirements of the due diligence process the novation will be agreed. If the proposed service provider does not meet the due diligence requirements and therefore the County Council is unable to novate the contracts, then the County Council would need to reconsider its options.

## **Conclusions**

20. These approvals will ensure the novations can be completed in a timely manner and facilitate the work needed to ensure a smooth transition between service providers and minimise the impact on the delivery of the highways service.

## REQUIRED CORPORATE AND LEGAL INFORMATION:

### Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

### Other Significant Links

Links to previous Member decisions:	
<u>Title</u> Hampshire Highways Service Contract <a href="https://www.hants.gov.uk/aboutthecouncil/councillors/meetings-archive/council-meeting-decision?item_id=6486">https://www.hants.gov.uk/aboutthecouncil/councillors/meetings-archive/council-meeting-decision?item_id=6486</a>	<u>Date</u> 9 July 2015
Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>

### Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

## **EQUALITIES IMPACT ASSESSMENT:**

### **1. Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **2. Equalities Impact Assessment:**

The decision sought in this report is a process change and will not change the services provided or have any impact on the individuals working on the service or service users, so has been assessed as having a neutral impact on groups with protected characteristics.