

**Report of the Traffic Manager (Acting)**

**Report to the Chief Officer (Highways and Transportation)**

**Date: 11 September 2020**

**Subject: Report to seek a waiver of CPR 8.1 and 8.2 to enter into a contract with the Department for Transport for the annual subscription to the Plan and Manage Roadworks Service, known as “Street Manager”, without seeking competition.**

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Summary**

**1. Main issues**

- The Department for Transport (DfT) is introducing the Street Manager service on 1 July 2020.
- Use of Street Manger is mandated by the DfT and it will replace the existing system known as the Electronic Transfer of Notifications (EToN). There is alternative product to the Street Manager system.
- The Chief Officer of Highways and Transportation is requested to approve the waiver of Contract Procedure Rules 8.1 and 8.2 to enable a contract with the DfT for use of the Street Manager service.

**2. Best Council Plan Implications** (click [here](#) for the latest version of the Best Council Plan)

- The recommendation of this report contributes to maintaining and strengthening ‘Smart City’ infrastructure as set out in the Best Council Plan Sustainable Infrastructure aspirations.

### **3. Resource Implications**

- Funding will be provided through the Highways Admin account (27804) on an annual basis.

### **Recommendations**

- a) The Chief Officer (Highways and Transportation) is requested to waive Contract Procedure Rule 8.1 and 8.2 – Intermediate Value Procurements – and approve entering into contract with Department for Transport (DfT) for the new Street Manager digital service at an annual cost of £30,000 for the 20/21 and 21/22 financial years without seeking competition.

#### **1. Purpose of this report**

- 1.1 This report sets out the reasons for recommending that the Chief Officer (Highways and Transportation) approves the waiver of Contract Procedure Rule 8.1 and 8.2 to enter into a contract with the Department for Transport (DfT) for the new Street Manager digital service at a cost of £30,000 per annum without seeking competition.

#### **2. Background information**

- 2.1 The Traffic Management Act 2004 imposes a duty on all local traffic authorities to secure the expeditious movement of traffic on their road networks, and to facilitate the expeditious movement of traffic on other authorities' networks. Additionally the New Roads and Street Works Act (NRSWA) 1991 places a duty to coordinate street and road works on the highway. These duties are the Network Management section and Traffic Manager for the Authority.
- 2.2 The DfT is currently designing a new electronic system, Street Manager, to record all information regarding current and planned works. The Street Manager system is mandated and due to be implemented by 1 July 2020. Street Manager will predominantly be set up to process permit applications and replace the current system used by the Council for managing street and road works, Electronic Transfer of Notifications (EToN). There is no alternative product available to Street Manager.
- 2.3 Leeds City Council until recently has operated a roadworks permit scheme which covered the busier roads within our network. Following DfT advice, and upcoming DfT mandated introduction of the Street Manager system, the permit scheme has been amended to apply all streets maintained by Leeds City Council. Separate approval has been sought and granted to agree the implementation of the All Streets Permit Scheme (ASPS).
- 2.4 Street Manager will be for registered users from local highway authorities, utility companies and their contractors. The Street Manager system will enable a single source of accurate, up to date and open data on road and street works with the vision of transforming the planning, management and communication of street and road works to ultimately minimise disruption and improve journeys for the public.

### **3. Main issues**

#### **3.1 Reasons for Contracts Procedure Rules Waiver**

- 3.1.1 The DfT has worked with the street and road works sector to develop a new digital service Street Manager intended to transform the planning, management and communication of street and road works through open data and intelligent services to minimise disruption and improve journeys for the public.
- 3.1.2 Use of Street Manger is mandated by the DfT and it will replace the existing system known as the Electronic Transfer of Notifications (EToN). No alternative product is available.
- 3.1.3 The management and communication of street works, including the use of EToN, is governed by various sets of regulations and guidance documents. The DfT is to amend regulations to ensure that communications are via Street Manager or electronic communications. The amended regulations and Street Manger system come into force on 1 July 2020.

#### **3.2 Consequence if the proposed action is not approved**

- 3.2.1 The Traffic Management Act 2004 imposes a duty on all local traffic authorities to secure the expeditious movement of traffic on their road networks, and to facilitate the expeditious movement of traffic on other authorities' networks. Additionally the NRSWA 1991 places a duty to coordinate street and road works on the highway.
- 3.2.2 The Authority's ability to carry out these statutory duties would be at risk and its reputation would be compromised for not utilising the mandated DfT system with a risk of the Department for Transport stepping in as Traffic Manager.

### **4. Corporate considerations**

#### **4.1 Consultation and engagement**

- 4.1.1 Internal communication has been undertaken to assist with a smooth transition to the Street Manager system.

#### **4.2 Equality and diversity / cohesion and integration**

- 4.2.1 The proposals requested in this report have no direct impact on any of the equality characteristics as it is purely an administrative function and therefore, it is not applicable to carry out an equality, diversity, cohesion and integration screening at this time.

#### **4.3 Council policies and the Best Council Plan**

- 4.3.1 The recommendation of this report contributes to maintaining and strengthening 'Smart City' infrastructure as set out in the Best Council Plan Sustainable Infrastructure aspirations.

##### Climate Emergency

- 4.3.2 A key duty of Network Management section and Traffic Manager is to minimise delay and disruption from works, including: a reduction in the average duration of works. The reduction in average works days and days of disruption contribute to the

Council's response to the climate emergency as it provides a reduction in carbon through reduced numbers of works vehicle movements and less congestion and disruption during works. This will clearly provide a benefit to public transport and active travel journeys.

- 4.3.3 Improvements through the Street Manager service will build on the above by improving the planning, management and communication of street and road works through open data and intelligent services. This will assist with smooth flow of traffic throughout the City and improved transport connections, promoting sustainable travel

#### **4.4 Resources, procurement and value for money**

- 4.4.1 Funding will be provided through the Highways Admin account (27804) on an annual basis. The DfT is to review the annual charge for the 22/23 financial year.

#### **4.5 Legal implications, access to information, and call-in**

- 4.5.1 This decision is a significant operational decision and is not subject to call-in but will be published by the Council. The report does not contain any exemptions or confidential information under the Access to Information Rules.
- 4.5.2 In approving this waiver without subjecting the contract to competition, there is a risk of challenge to the Council from other potential providers that it has not been wholly transparent and that they may have been unfairly denied the chance to tender for this opportunity. In terms of transparency it should be noted that European case law suggests that contracts of this value should be subject to a degree of advertising if it is considered that it would be of interest to contractors operating in another Member State. It is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc) and the geographical location of the place of performance.
- 4.5.3 The EU case law has been considered in this and, due to the nature of the product, with Street Manager being the mandated national system for planning, management and communication of street and road works there is no viable alternative currently available. It is considered that the scope and nature of the services are such that it would not be of interest to contractors in other EU member states. There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 4.5.4 Whilst making the decision, the Chief Officer (Highways and Transportation) should acknowledge the risks identified above.
- 4.5.5 Although there is no overriding legal obstacle preventing the waiver of CPR 8.1 and 8.2, the above comments should be noted. In making their final decision, the Chief Officer (Highways and Transportation) should be aware of the risk of challenge to the Council and be satisfied that on balance the course of action chosen represents Best Value for the Council.

## **4.6 Risk management**

- 4.6.1 As identified in section 4.5 above, there is a risk to the Council in awarding a contract directly in this way. However, the Chief Officer (Highways and Transportation) considers that the risks are outweighed by the benefits of awarding a contract and the resource/value for money implications of doing so.
- 4.6.2 It is considered that in terms of the risk of challenge to the procurement route of this contract, the Council has taken steps to mitigate this. The contract, given its value, falls outside any remit of the EU Procurement Regulation beyond the duty to act transparently, fairly and non-discriminatorily that applies to all contracts.

## **5. Conclusions**

- 5.1 The Street Manager system will enable a single source of accurate, up to date and open data on road and street works with the vision of transforming the planning, management and communication of street and road works to ultimately minimise disruption and improve journeys for the public. No alternative product is available.
- 5.2 In addition the system will be instrumental in complying with duties under The Traffic Management Act 2004 and NRSWA 1991.

## **6. Recommendations**

- 6.1 The Chief Officer (Highways and Transportation) is requested to waive Contract Procedure Rule 8.1 and 8.2 – Intermediate Value Procurements – and approve entering into contract with Department for Transport (DfT) for the new Street Manager digital service at an annual cost of £30,000 for the 20/21 and 21/22 financial years without seeking competition.

## **7. Background documents<sup>1</sup>**

- 7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.