



Date: 17 October 2012

## Item 9: London Highways Alliance Contract

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### This paper will be considered in public

## 1 Summary

- 1.1 The purpose of this paper is to ask that the Committee recommends that the Board grants authority to award:
- (a) four framework agreements collectively referred to as the London Highways Alliance Contract (LoHAC); and
  - (b) four call-off contracts with total anticipated expenditure by TfL of £1,185m to deliver highways maintenance and related services on and around the TfL Road Network (TLRN) from 1 April 2013 to 31 March 2021,
- together with certain delegations as set out in this paper to implement those arrangements.
- 1.2 The LoHAC framework agreements are the product of a collaborative procurement and will be accessible to TfL, London boroughs and members of the GLA Group.
- 1.3 A paper is included on Part 2 of the agenda, which contains exempt supplemental information. The information is exempt by virtue of paragraph 3 of Schedule 12a of the Local Government Act 1972 in that it contains information relating to the business affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from this meeting.

## 2 Recommendations

- 2.1 **The Committee is asked to note the paper and recommend to the Board that it:**
- (a) **notes the paper;**
  - (b) **approves entering into four framework agreements for highways maintenance and improvement schemes, as described in this paper and approves procurement authority to enter into four contracts with an aggregate value of £1,185m, as described in the corresponding paper on Part 2 of the agenda;**
  - (c) **delegates to the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) the authority to finalise the terms of the framework agreements and contracts referred to in paragraph 2.1(b) above;**

- (d) **authorises the agreement and execution (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate) any documentation to be entered into in connection with the completion and implementation of the framework agreements and contracts referred to in paragraph 2.1(b) above and any of the matters referred to in any of them (including, without limitation, all agreements, deeds, guarantees, indemnities, announcements, notices, contracts, certificates, letters or other documents); and**
- (e) **authorises TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the execution and implementation of the framework agreements and contracts referred to in paragraph 2.1(b) above.**

**2.2 The following Officers and Subsidiaries shall have delegated authority:**

- (a) **TfL Officers: the Commissioner, Managing Director Finance, Managing Director Surface Transport, General Counsel and the Chief Finance Officer.**
- (b) **Subsidiaries: Subsidiaries of TfL including Transport Trading Limited and any other subsidiary (whether existing presently or to be forms) of Transport Trading Limited and any of the directors of the relevant company shall be authorised to act for and on behalf of that company.**

### **3 Background**

- 3.1 Highways maintenance is a business critical service for TfL, the quality of which has a direct influence on disruption to road users on the TLRN. Since 2007, this service has been delivered through three Highways Maintenance and Works Contracts (HMWCs).
- 3.2 In December 2010, it was decided not to extend the HMWCs past their earliest expiry date of 31 March 2013.
- 3.3 London boroughs, the City of London and TfL between them currently spend around £450m per annum on highways related activities, £360m procured through over 100 contracts based on geographic area, network type and activity. Five contractors hold 50 per cent of these contracts, which equates to 80 per cent by value. Of these five contractors, two deliver more than half (by value) of the London boroughs' work. One contractor has contracts with at least 13 boroughs.
- 3.4 The LoHAC is a key workstream of the wider programme to Transform London's Highways Management (TLHM). LoHAC is a collaborative highways maintenance and improvement schemes contract developed jointly by TfL and boroughs and includes a common specification – a first for highways maintenance in London. The geographic region covered by each of the four framework agreements is shown in Appendix 1. The Central and South regions remain the same as under the HMWCs, however, the current North region has been divided into two areas under LoHAC. This is to maintain a manageable and sustainable contract size should the take-up by London boroughs in the North region reach the maximum potential.

- 3.5 A collaborative approach whereby TfL and London boroughs deliver highways maintenance through the same mechanism has been discussed many times before without coming to fruition. However, with economic conditions resulting in highways maintenance budgets across London reducing and a large number of contracts expiring in 2013 (including TfL's), it was agreed that it was appropriate to run a collaborative procurement for highways maintenance contracts in London.
- 3.6 In addition to tendering four framework agreements, TfL and twelve "Tier 1" London boroughs (listed in Appendix 2) also tendered call-off contracts as part of the same procurement process. Tier 1 boroughs are those whose existing contracts expire in 2013. An objective of the TLHM programme is for LoHAC to provide all highway related services across London and it is anticipated this will be met as further boroughs form call-off contracts when their existing arrangements expire. Another six boroughs, whose existing arrangements expire in 2014, have expressed an interest in forming a call-off contract.
- 3.7 TfL's Local Implementation Plans (LIPs) funding guidance advises that boroughs will be expected to utilise the LoHAC arrangements where they represent better value for money than existing arrangements, provided the borough would not be in breach of its existing arrangements by delivering LIPs schemes through LoHAC. It is anticipated the savings achieved through LoHAC will enable more schemes to be delivered via the LIPs fund. Boroughs are also expected to save tender costs. The annual value of LIPs funding is £150m in 2012/13 and 2013/14 and, as a minimum, it is expected that 50 per cent of this will be delivered via LoHAC, with the remainder being delivered via boroughs with existing contractual commitments or procurement routes where equal or better value can be demonstrated.
- 3.8 The proposed LoHAC contractors have been chosen on the basis that (among other things) they will be of sufficient scale and sophistication to plan, manage and deliver services using a combination of internal resources and sub-contractors. The contractors' integrated relationship with clients, including co-location of staff, will lead to efficient delivery and contract management, whilst seeing clients retain responsibility for asset management and project conception.
- 3.9 There are 23 discrete services which are covered by the LoHAC. The conditions of contract are designed to ensure flexibility, meaning clients do not need to take the whole range of services. Services include emergency call-out, winter maintenance, lighting, safety and service inspections, and maintenance of tunnels and structures.
- 3.10 As well as replacing the three HMWCs, the opportunity is being taken to incorporate the civil engineering support works for traffic signals and inspection of highway structures contracts (both are area-based contracts covering the same areas as the HMWCs) into TfL's call-off contracts.

## **4 Procurement Strategy**

- 4.1 The procurement strategy was designed to encourage competition and provide opportunity for a wide range of bidders to be involved e.g. by forming consortia or joint ventures. Borough representatives were included in the design of the strategy and the evaluation of tenders.

#### 4.2 The strategy included:

- (a) an increase in the number of contract areas from three (as per the current HMWC arrangement) to four. This increase is to maintain contracts of a manageable and sustainable size in the event that there is a high level of take-up by London boroughs;
- (b) the four area-based LoHAC framework agreements will have an eight year duration (see paragraph 5.2 below), with call-off contracts able to be formed at any time during the framework agreement; and
- (c) a multi stage evaluation process to drive maximum value through this procurement such that:
  - (i) a rigorous pre qualification process assessed the generic capability of bidders to deliver the requirements;
  - (ii) bidders were given a general briefing and individual meetings to ensure they fully understood the requirement;
  - (iii) shortlisted tenders were evaluated in the traditional way based on an assessment of quality and financial aspects and an overall tender score awarded (using a quality:price ratio of 30:70). Scores in each framework area were ranked and the top two (or three) tenderers were invited to the next stage;
  - (iv) tenderers who were shortlisted for multiple framework areas were given the opportunity to demonstrate their capacity and capability to deliver multiple Lots. This approach allowed tenderers who were deemed capable of delivering multiple framework areas the opportunity to submit bids which demonstrated the financial benefit of delivering more than one framework area;
  - (v) tenderers successful in qualifying for multiple framework areas, plus those who were shortlisted for a single framework area were then invited to submit best and final offers (BAFOs); and
  - (vi) at the BAFO stage, evaluation award of framework areas was based solely on which combination of shortlisted tenderers' financial submissions offered the best value for London. The BAFO stage was completed in August 2012.

## 5 Key Contract Principles

- 5.1 The framework agreements contain the mechanism for call-off contracts to be formed. Each client will form its own call-off contract with the contractor. TfL will not be party to borough call-offs and will have no liabilities associated with borough call-offs.
- 5.2 The term of the framework agreements will be eight years to ensure best value for money and efficient delivery of the works. The HMWCs were let with a six year duration with the option to extend to ten years. Following consultation with the market it was concluded that because of the significant start up costs and investment in capital equipment (plant, systems and depots) eight years

represents the optimum duration in terms of best value. Additionally, it is the intention that boroughs will place call-offs for work as their existing contracts expire and opportunities arise in future years and a longer duration will facilitate this and enable best value through providing economically attractive call-offs for boroughs and the contractors.

- 5.3 The framework agreement details the mechanism for boroughs to form a call-off contract in the future. The mechanism is based on the following approach:
- (a) the borough will approach the Strategic Board (the board established to monitor and manage the frameworks) asking to form a call-off. Six months notice must be given before the service is required to commence. Boroughs will be able to join until two years before the contract expires (i.e. the latest joining date will be April 2019);
  - (b) a meeting will take place between the borough and the contractor to discuss the service required and requirements for mobilisation;
  - (c) the borough will draft the call-off contract. This will be agreed with the contractor, ratified by the Strategic Board and then signed by both parties; and
  - (d) upon commencement of the call-off, the borough will be invited to join the Area Board (the board established to monitor and manage the contractor's performance under the framework agreement and all associated call-off contracts).
- 5.4 The conditions of the call-off contract are based on the NEC3 Term Services Contract, which has been amended to enable authorities to tailor the service provided by a supplier to their individual requirements and to incorporate lessons which have been learnt during the term of the HMWCs.
- 5.5 Lessons learnt during the term of the HMWCs were discussed during a number of workshops held with TfL officers and existing contractors. Key lessons learnt which have been incorporated into the LoHAC conditions of contract include:
- (a) the need to set out more clearly how compensation events should be priced, linking them back to the original tendered rates;
  - (b) the need to include a mechanism for paying for the design element of a design and build commission upon completion of the design, to maintain the contractor's cash flow; and
  - (c) the need to link completion and payment to provision by the contractor of the necessary health and safety documentation and setting a rigorous timescale for this to be delivered. NEC3 does not focus on this and getting the as-built drawings and health and safety files at the end of a project has been problematic during the term of the HMWC.
- 5.6 The LoHAC conditions incorporate the amendments used across TfL, which act to strengthen TfL's position and introduce additional requirements upon the contractor which are not covered within the basic NEC3 form of contract. Examples of TfL standard amendment clauses include:
- (a) ensuring delivery programmes are sufficiently detailed;
  - (b) ensuring compliance with TfL policies;

- (c) reflecting public sector requirements such as dealing with freedom of information obligations; and
  - (d) the handling of intellectual property.
- 5.7 Core services, including cyclic maintenance and lower value reactive maintenance, will be delivered on a lump sum basis. Lump sum refers to activities that the contractor will be responsible for delivering without instruction. In each case the lump sum is a tendered price which will be subject to inflation in accordance with the contract formula. This approach minimises transaction costs by removing the need to issue and agree orders for each piece of work. Core services included in TfL's call-off contract will be committed to the contractor for the term of the call-off.
- 5.8 The facility to move the delivery of core services from a series of lump sums to a single target cost has been built into the conditions of contract and a map for this transition included.
- (a) The target cost approach provides incentive for TfL and the contractor to work collaboratively to control and reduce costs as the benefits and risks are shared.
  - (b) Under LoHAC the target cost for core services will be based on a full open book analysis with data available from all four contractors from day one. With four framework areas all under open book TfL will have the ability to benchmark each contractor against the others for the similar lump sum activities.
  - (c) The contract contains a mechanism for agreeing the target cost for lump sums based on actual cost collected under the open book mechanism. If a target cannot be agreed then TfL has the contractual right to set the target based on the actual spend on lump sum activities in the preceding 12 months (as demonstrated through open-book accounts) uplifted by inflation and the contractor's tendered fee for profit and overhead. The target will be revisited annually.
  - (d) The decision to move to target cost will be made only after careful analysis and if there is a good understanding of the risks involved.
- 5.9 A contract reduction mechanism has been developed to incentivise the contractors to achieve five key performance indicators (see Appendix 3).
- (a) The contract reduction mechanism has been developed to drive good contractor performance whilst ensuring the contract represents value for money. Fixing the term of the framework rather than including an optional extension period means that the contractor will write off its capital investment and overheads over the longer duration, resulting in TfL paying less over the framework term.
  - (b) Review of performance against these indicators will take place annually and failure to achieve the indicator targets will result in the duration of the framework agreement and all associated call-off contracts being reduced by six months. Performance on all clients' call-off contracts will be considered. The contractor will have the opportunity to win back these six months by improving its performance against the failing indicator(s) in the following year. Reduction of duration in two consecutive years gives the

framework employer (TfL) the right to terminate. In the event that TfL terminates a framework agreement then clients who have formed call-off contracts under that framework agreement will have the right to terminate.

- (c) This method of contractor incentivisation is considered effective because the loss of a six month period would reduce the contractor's order book by around £20m. This very public declaration of failure would no doubt be highly embarrassing for the contractor and have a greater effect on their business than just the loss of revenue.
- 5.10 TfL has retained the right to terminate the contract in the event of material or persistent breach, and in the event of insolvency, change of ownership, breach of the corrupt gift and payments or equality and diversity clauses and unsatisfactory conflicts of interest.
- 5.11 A volume rebate clause has been included in the contract to incentivise more boroughs to join as the rebate increases in line with the volume of work procured through the framework. All clients, including TfL, will benefit financially as more boroughs join.
- 5.12 The framework agreements comply with the GLA Group Responsible Procurement policy and in particular include:
- (a) a requirement for contractors to appoint one apprentice, or equivalent, per £3m spent through the framework. This will result in over 250 apprenticeships during the framework term;
  - (b) a requirement for contractors to join the Fleet Operator Recognition Scheme;
  - (c) a requirement that every vehicle exceeding 3,500 kilograms (including those used by subcontractors) has side guards, close proximity sensor, class VI mirrors and prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside; and
  - (d) a requirement for contractors to identify possible sources of pollution and provide detail on how they will prevent and/or reduce them.

## **6 Benefits**

- 6.1 Tendered rates and prices represent a saving of 25 per cent against TfL's HMWCs (tendered in 2005/06). Savings have been calculated by undertaking a like-for-like comparison between the cost of delivering maintenance and improvement schemes under the current HMWC arrangements, uplifted to reflect the cost of delivery in 2013/14, with the cost of delivering via LoHAC.
- 6.2 An 11 per cent saving has already been assumed and incorporated into the TfL Business Plan. Savings potential for boroughs will vary dependant on a number of factors including the type of works to be delivered under their call-off. For the ten borough contracts that have been evaluated, efficiencies in the region of 15-30 per cent have been shown.
- 6.3 Savings have been achieved through a cost focused procurement process (30:70 Quality:Price ratio). Inclusion of open book pricing principles, target costing, an annual efficiency challenge (based on only uplifting rates and prices

by 80 per cent of inflation) and volume discounts also provide opportunities for further savings in future years.

6.4 Non-financial benefits include:

- (a) highways maintenance delivered using a common specification, thus increasing contractor efficiency and simplifying contract management;
- (b) a common specification simplifies ongoing asset management;
- (c) the long term nature of this contract enables contractors to make the necessary resource investment to deliver lasting cost and quality improvements; and
- (d) closer working relationships established between TfL and London boroughs leading to highways maintenance being delivered in a consistent manner across London.

**List of appendices to this paper:**

Appendix 1 – Framework Areas

Appendix 2 – List of Tier 1 Boroughs

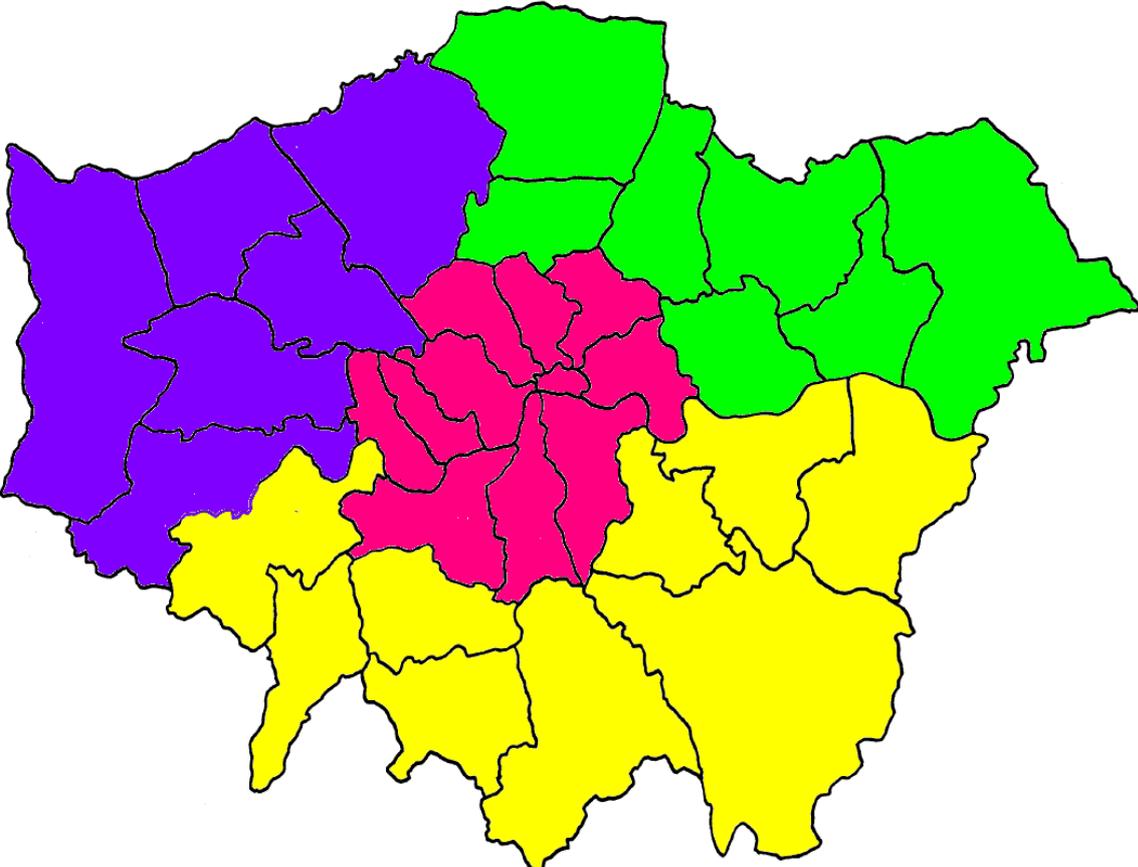
Appendix 3 – Contract Performance Regime

**List of Background Papers:**

None

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Framework Areas



**List of Tier 1 Boroughs**

**South area:** Kingston upon Thames, Greenwich, Bexley, Bromley and Lewisham.

**Central area:** Islington, Camden, Lambeth, Southwark and Tower Hamlets.

**North West area:** Barnet and Brent.

**North East area:** No Borough existing contracts expire in 2013. All boroughs in NE could potentially join in 2014.

### **Contract Performance Regime**

The best option for contractor incentivisation is considered to be the award of an eight year fixed length framework contract with a duration reduction mechanism.

The approach to contract performance builds on TfL and borough experience and seeks to improve it. It also addresses the added complexity of several client organisations being involved in the contract and having their own requirements for performance measurement. A review has been undertaken of borough contracts incorporating performance indicators/ measures alongside that of TfL. This identified that authorities have adopted a mixture of performance indicators and measures.

Discussions took place with borough officers at London Technical Advisors Group (LoTAG) meetings at which there have been wide ranging views on an appropriate performance management regime and the approach to be taken on developing an appropriate set of key performance indicators for the LoHAC.

Prior to developing a new performance measurement model, feedback was sought from industry, via the Highways Term Maintenance Association, on its experience of good and bad approaches.

Performance will be monitored at both Area and Framework level (pan London) through the Area Management Boards and Strategic Board.

The methodology has been developed with simplicity in mind – it being important that any performance management mechanism is manageable for both parties and does not add unnecessary cost:

#### **Primary Performance Indicators and Secondary Performance Indicators**

This approach addresses performance measures at two levels. At a strategic level there are five Primary Performance Indicators (PPIs) (see table 1 below) which are linked to TfL's key objectives for the contract and 21 Secondary Performance Indicators (SPIs) (see table 2 below) which focus on detailed contractual compliance.

#### **Contractor Incentivisation**

Starting in the second year, the contractor's performance in the preceding year is assessed against the five PPIs and SPIs. If for a relevant year, the contractor achieved the consolidated annual target for the PPIs and the monthly target for a minimum of eight months for the PPIs in that year, then the term of the contract is not reduced.

If the contractor achieves the requirements for fewer than five PPIs then performance against the SPIs is reviewed. If the contractor achieves the consolidated annual target for four of the PPIs and for 75 per cent or more of the SPIs, then at the term of the contract is not reduced.

However, if the contractor achieves fewer than four out of the five PPIs or four of the PPIs but less than 75 per cent of the SPIs, then the term of the contract is reduced by six calendar months.

If during the following year performance improves to the required level, then the lost time is won back. If performance does not improve then the term of the contract is reduced by another six months.

Reduction of duration in two consecutive years gives the framework employer (TfL) the right to terminate.

## Reporting Process

PPIs and SPIs will be reported four weekly to Area Management Boards for review. Part of the Area Management Board's responsibility will be to undertake benchmarking across the four frameworks.

The contractor will report against the entire suit of PPIs and SPIs in a way which gives visibility of their performance on each client's network. This approach will enable individual clients to evaluate the contractor's performance on their network and where necessary discuss areas for improvement with action plans etc. implemented at the contractor's expense.

A contractor league table will be introduced to drive competition between the four contractors and in turn improve the overall standard of performance.

**Table 1 – PPIs for LoHAC Contracts**

Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome
1	<b>Public and Workforce kept Safe</b>	Percentage of Category 1 defects repaired on time	Ensure the network is safe for all forms of traffic.
5	<b>Reduced Disruption on the Network</b>	Percentage of emergency call-outs (ECO) attended and appropriate action taken on time	Reduce disruption through appropriate choice of action in response to Category 1 (ECO) defects.
8	<b>Preventative Maintenance is effective</b>	Delivery of Cyclic Activities to programme	Increased availability of the network through preventative maintenance.
16	<b>Scheme Delivery is Effective</b>	Percentage Schemes completed on time	Ensure that the programme is delivered swiftly and efficiently.
20	<b>Contract Requirements fulfilled</b>	Percentage Schemes/ Works where final application payment was submitted on time	Timely and efficient processing of financial payments on completion of all works.

**Table 2 - SPIs for LoHAC Contracts**

<b>Indicator Number</b>	<b>Performance Theme (Outcome)</b>	<b>PI Title</b>	<b>Indicator Outcome</b>
2	<b>Public and Workforce kept Safe</b>	Percentage of Category 2 defects repaired on time	Ensure the network is safe for all forms of traffic.
3	<b>Public and Workforce kept Safe</b>	Percentage of Safety Inspections completed on time	Ensure Safety defects are identified and appropriately categorised.
4	<b>Public and Workforce kept Safe</b>	Reduction in Injuries	To demonstrate the effectiveness of the Contractor's safety culture and processes by monitoring the AFR, AIR and other Safety related metrics.
6	<b>Reduced Disruption on the Network</b>	Percentage of precautionary salt treatments completed within required time	Safe carriageways, footways and cycleways free of winter weather related hazards.
7	<b>Reduced Disruption on the Network</b>	Percentage of works complying with the TMA requirements	Ensure the Employer meets their Network Management Duty.
9	<b>Preventative Maintenance is effective</b>	Completion of Ordered Works to timescale	To demonstrate effective planning and programming of works.
10	<b>Preventative Maintenance is effective</b>	Average number of days to repair Lighting Defects	Well maintained Lighting.
11	<b>Preventative Maintenance is effective</b>	Availability of Employer defined Tunnel Assets	Well maintained Tunnels.
12	<b>Preventative Maintenance is effective</b>	Percentage of Principal and General Inspection reports delivered and accepted on time for Bridges and Other Structures	Ensure timely and accurate reporting of Inspection Information.
13	<b>Responsible attitude to Procurement Strategy</b>	Percentage Construction and Demolition waste reused or recycled	Successful management of construction and demolition waste in order to reduce the use of raw materials, encourage recycling and reuse and minimise the waste taken to landfill sites to offer both environmental and economic benefits.
14	<b>Responsible attitude to Procurement Strategy</b>	Percentage Recycled and/or green products procured	Reduce consumption of new resources by procuring recycled and green construction materials and following the principles of sustainable procurement.
15	<b>Responsible attitude to Procurement Strategy</b>	Percentage of Contractor vehicles which meet the required Euro Standards	Reducing the environmental impact of the vehicle fleet.
17	<b>Scheme Delivery is Effective</b>	Percentage of Schemes where defects were rectified within required time	Minimum impact on the Customer after Scheme completion.

18	<b>Scheme Delivery is Effective</b>	Percentage of acceptable Health and Safety file information received within four weeks of scheme completion	Enable the Employer to fulfil its legislative requirement under CDM Regulations 2007.
19	<b>Scheme Delivery is Effective</b>	Average absolute variance between the Contractor's estimate and the Employer's instructed value for scheme works	Accurate forecasting of financial information.
21	<b>Contract Requirements fulfilled</b>	Percentage compliance to updating Employer asset inventory systems within Employer timescales	Employers Asset Management System is updated promptly and accurately.
22	<b>Contract Requirements fulfilled</b>	Percentage compliance to updating Employer asset inventory systems accurately	Update the inventory within the Employer's Asset Management System accurately after maintenance activity or scheme works.
23	<b>Contract Requirements fulfilled</b>	Percentage of estimates for Employer instructed works received within required timescales	Ensure timely and efficient processing of instructed works.
24	<b>Contract Requirements fulfilled</b>	Early Warning/Compensation Events Register	Timely response to Early Warning Notices and Compensation Events.
25	<b>Improved Customer Satisfaction</b>	Response to Complaints and Requests requiring Contractor action within contractual timescales	Improved public perception of the services provided.
26	<b>Improved Customer Satisfaction</b>	Third Party Claims against Contractor	Effective assistance in defence of third party claims