

Decision maker:	Cabinet member contracts & assets
Decision date:	Wednesday 7 February 2018
Title of report:	Extension of existing cleaning and construction contracts
Report by:	Strategic property services manager

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To extend the existing cleaning and construction contracts for a period of five months to provide sufficient time to complete the procurement process.

Recommendation(s)

That:

- (a) the existing contracts for cleaning (Interserve) and construction (Integral) be extended for a period of five months to 31 August 2018 at a cost of £0.45m and £1.5m.**

Alternative options

1. Not to extend the contracts, this is not recommended because Herefordshire Council will require some form of building maintenance and cleaning services to continue operating and delivering services from its property portfolio and there is insufficient time to complete a re-procurement before the current contracts end on 31 March 2018.
2. The option of procuring individual contracts for each element of construction / maintenance work has been considered. Given the volume of small orders, this approach does not comply with the EU rules around aggregation of contracts and in addition would also take considerable additional time and staff resources and therefore this option is not recommended.
3. The option of bringing the services in house and to TUPE (Transfer of undertakings (Protection of Employment)) in the existing staff has been discounted as this would be a more costly option and would require additional plant, equipment and ICT programs that are not held in the council at present and would need further resources to purchase.
4. The option of utilising the existing Balfour Beatty Living Places Public Realm contract instead of retendering was also considered, however this has been discounted for the following reasons:
 - Such an approach would not visibly demonstrate that the market has been tested to ensure the services are providing best value on works of this type.
 - This approach could lead to the council being challenged by other providers of these services.
 - A short term move into the BBLP contract was also considered to allow the tendering of the new contract but this could involve double handling from a TUPE point of view when the contract was retendered and this approach does not offer benefits over extending the contract with the existing provider.

Key considerations

5. The existing contracts with Interserve UK Ltd (for cleaning and related services) and Integral UK Ltd (for construction and building maintenance) were awarded in September 2013 for a period of 3 years with the option to extend for 2 more years. In August 2016 the cabinet member (contracts and assets) took a decision to exercise the option under both contracts to extend the current arrangements to 31 March 2018. Both contracts contain the ability to extend the contract term until September 2018.
6. The intention is to re-procure the services during the contract extension.
7. The providers have both indicated they are willing to agree to extend the contract period on the terms provided for in their respective contracts.
8. In the case of Integral this will involve reverting to the original terms which set the required threshold for tendering works at £100k, enabling all works under that threshold to be directly carried out by Integral. More recently, at the Council's request, all works over £5k have been tendered but this was a relatively recent departure from the agreed contractual position which Integral have confirmed would not continue to be commercially viable during any further extension period.

9. Integral have indicated that they are looking to start demobilisation of the existing contract in January 2018, and if required to extend would need confirmation before that date to delay the demobilisation.
10. The anticipated timeline to undertake the tender award is 18-21 weeks (including a mobilisation period). This therefore means that it will be necessary to obtain approval at the 12 April cabinet meeting.

Community impact

11. The services covered by this procurement are important to users of the council's stock and maintain them in a condition that is safe for community users and staff and are vital to the maintenance and development of Herefordshire Council's property stock. This contract enables Herefordshire Council to react to these requirements in a timely and cost effective way.
12. Preserving our stock in a good condition, by using the contract will secure better value for money on reactive works, and procurement costs by reducing the work involved in tendering.
13. The council has a duty of care to ensure the safety of the users of our buildings both visiting public and our staff; this contract enables us to comply with these duties.
14. The contract will be used to ensure statutory compliance of our stock by providing the vehicle to deliver the appropriate servicing and inspection regime.

Equality duty

15. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
16. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.
 17. As a procurement project this has no direct impact on the council's duty but it will pay due regard to our public sector equality duty and we will pay due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this act; we will also advance equality of opportunity between persons who share protected equalities and diversity requirements have been integrated into the procurement process and an equality impact assessment will be carried out before the new arrangements are in place characteristic and persons who do share it; and foster good relations between persons who share a relevant protected characteristic

Further information on the subject of this report is available from

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and persons who do not share it.

Resource implications

18. This is limited to the staff time required for the taking up of the contractual option of an extension and the legal input in altering the existing agreement. The figure for this would be the legal time required to draw up an extension and officer time negotiating the terms with the contractor, this is anticipated as below £5k.
19. The draft 2018/19 revenue budgets includes amounts for construction works and cleaning, that will fund the cleaning costs of £0.45m and construction costs of £1.5m.

Legal implications

20. The Integral and Interserve contracts commenced on 1 September 2013 for a term of three years. The council has the ability to extend the contact for a further two years in accordance with the contract to the 31 August 2018.
21. The council's duty to secure best value in the discharge of all of its functions needs to be kept under regular review in the case of contracted services and subject to robust contract management and competitive procurement processes. Accordingly it is appropriate that preparations are underway for a further procurement process for this service. Pending that procurement process the extension to the existing contract would appear to provide a best value solution bearing in the mind the alternative options which have been considered.
22. The council must comply with EU procurement law and specifically the provisions of the Public Contract Regulations 2015 in the procurement of services of this financial value. The fact that the council's spend on the Integral contract has exceeded the initially procured financial value does give rise to a risk of legal challenge under the Public Contract Regulations 2015. However the fact that the council has committed to re-procuring the service at the earliest reasonable opportunity should mitigate this risk and provide reassurance to contractors and other interested parties that this commercial opportunity will be coming back to market imminently.

Risk management

23. Risks of a complaint or challenged that the contracts should be put out to tender now and not extended are mitigated by the short term of the extension and the fact the council is preparing for the retendering process.
24. Risk of the contractor pulling out of the contract are mitigated by agreeing to alter the level of works that can go through the contract and a long enough period for the extension to be commercially viable.
25. Risk of not having arrangements in place before the existing contractor starts demobilising, mitigation is a quick decision on this report.

Consultees

26. Political group leaders have been consulted and no comments have been received.

Appendices

None.

Background papers

None