

### Record of officer decision

<b>Decision title:</b>	St Owens day opportunities re-procurement: managing the Local Government Pension Scheme liabilities
<b>Date of decision:</b>	30.05.18
<b>Decision maker:</b>	Director AWB
<b>Authority for delegated decision:</b>	The Cabinet Member delegated authority to the Director for Adults and Wellbeing through a key decision 8 May 2018 to take decisions necessary to implement the recommendation, to ensure the tender process was implemented and the contract awarded for the day opportunities re-procurement.
<b>Ward:</b>	Countywide
<b>Consultation:</b>	None required
<b>Decision made:</b>	<ol style="list-style-type: none"> <li>1. The Council to retain certain of the LGPS risks and liabilities relating to this re-procured contract, in accordance with the following apportionment of risk as between authority and contractor, namely: <ol style="list-style-type: none"> <li>(a) Contractor enters the Fund on the basis of a fully funded scheme;</li> <li>(b) Contractor is responsible for paying the Employer's Contribution Rate at 21.2% during the term of the contract;</li> <li>(c) Contractor is responsible for paying any actuarial strains within their control and directly arising from the workforce for example, ill health and redundancy costs, pay increases;</li> <li>(d) Council is responsible for paying any increase to the Employer's Contribution rate required by the Fund during the term of this contract;</li> <li>(e) Council is responsible for meeting any deficit arising at the end of the contract which is caused by market related conditions or otherwise is not caused by the Contractor's failure to meet its obligations to the Fund;</li> <li>(f) Council provides the Fund with any underwriting required to protect against the contractor's insolvency risk and consequently the contractor does not have to provide a bond or other third party guarantee.</li> </ol> </li> <li>2. In the event that there are any costs arising from the decision (1) above, due to a direct demand from the Fund for payment by the Council, the service budget for this contract shall be required to fund those costs.</li> </ol>
<b>Reasons for decision:</b>	(a) Under the Best Value Authorities Staff Transfers (Pensions) Direction 2007 certain former employees of the Council who are now in the employment of the Council's incumbent contractors, have rights to remain in the Local Government Pension Scheme whenever their employment transfers to another employer as result of a re-tendering of the Council's service contract.

	<p>(b) The Worcestershire LGPS Fund will require the new contractor to enter into an Admission Agreement to join the Fund in order to continue to provide the LGPS benefits to the small cohort of legacy staff. The Admission Agreement makes provision for the treatment of costs and liabilities during the life of the contract and at its cessation. These costs and liabilities could be substantial, should they crystallise, for a contractor and it is notable that this contract is for a very short duration (a term of 1 + 1 years) pending a longer term strategic commissioning process by the Council in respect of these contracted services.</p> <p>(c) Bidders in the current procurement process have raised clarifications about the treatment of LGPS costs and liabilities in this contract.</p> <p>(d) It is not considered financially viable to expect to pass all pension costs and risks to the new contractor for this contract- the likely consequence of doing so is that bidders will withdraw from the current procurement process or effectively price all the risk back into the contract. The effect of this would be that the Council would not be able to award a contract on the 1 December this year and within the planned budget.</p> <p>(e) The Fund is likely to treat the Council differently to the contractor as regards the treatment of unfunded LGPS costs and liabilities. This is because the Council is a Scheme Employer within the Fund and is a precept raising authority. The Fund is likely to allocate the liabilities which the Council has taken responsibility for, to the Council's own scheme within the Fund and thus roll them forward uncrystallised (although the Fund will not guarantee this position and always reserves its rights to crystallise liabilities at a cessation event such as the termination of an Admission Agreement).</p>
<p><b>Highlight any associated risks/finance/legal/equality considerations:</b></p>	<p>The legal considerations have been discussed with Legal Services who support the proposal to risk sharing, as outlined above, on this particular contract. Legal Services will ensure that the risk sharing arrangements are appropriately documented in the contract with the successful bidder in this procurement, and will liaise with the Fund to ensure all of its requirements are met through the Admission Agreement.</p>
<p><b>Details of any alternative options considered and rejected:</b></p>	<p>The alternative option is to pass all of the LGPS risks to the new contractor. This is expected to produce a procurement outcome which will not be best value for the Council, for this short term contract, as explained in the Reasons section, at points (c) and (d) above.</p>
<p><b>Details of any declarations of interest made:</b></p>	<p>None</p>

Officer Name: Stephen Vickers  
Adult and Wellbeing

Officer Title: Interim Director for Adults

Signed:

Date: 30/05/2018