

<b>Decision maker:</b>	<b>Cabinet member transport and regulatory services</b>
<b>Meeting date:</b>	<b>Monday 9 July 2018</b>
<b>Title of report:</b>	<b>Public realm contract extension</b>
<b>Report by:</b>	<b>Head of highways and community services</b>

## **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.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

## **Wards affected**

(All Wards);

## **Purpose and summary**

To approve an extension of the public realm service contract, with Balfour Beatty Living Places, in line with contract terms and conditions. The contract period is September 2013 to August 2023, with up to a ten year extension. The contract has reached the first relevant period for review of strategic performance and contract extension. The contract will extend the term to August 2024.

The overall performance delivery is positive with the required thresholds being met, 12 of the 16 indicators achieving acceptable or above performance. A report has been produced which demonstrates the performance position, scoring mechanism, trends and outcome.

## **Recommendation(s)**

**That:**

- (a) Balfour Beatty Living Places be awarded a one year extension (to 31 August 2024) to the public realm service contract;**
- (b) Authority be delegated to Cabinet Member for Highways and Roads, for future contract extensions, through the contract governance arrangements**

## **Alternative options**

1. Not to award an extension to the contract at this time. This is not recommended as the contract follows a model that is designed to incentivise the provider to achieve successful performance delivery throughout the potential contract term. Successful performance is gauged against strategic indicators which are monitored and considered at relevant set periods through the term of the contract. As Balfour Beatty Living Places (BBLP) has achieved acceptable strategic performance, as defined by the contract they are entitled to a contract extension unless the council exercises its discretion to do otherwise. Such discretion must be exercised reasonably in the circumstances following discussion with BBLP. No reasonable circumstance for the exercise of this discretion has been identified.
2. To award an extension of the contract period to BBLP that is greater than one year. Under the contract the council has discretion to award extensions of greater than one year following the attainment of acceptable strategic performance by BBLP. This is not recommended at this time as the contract follows a model that is designed to incentivise the provider to achieve successful performance delivery throughout the potential contract term, and the early award of additional contract extension following this first review period may act as a disincentive to BBLP's contractual performance later in the contract term.

## **Key considerations**

3. The public realm services contract between the council and BBLP commenced on the 1 September 2013. This is one of the council's strategic and most significant contracts in terms of range of services and value. To ensure the services provided through the contract meet the council's requirements, the performance is closely monitored and performance is incentivised throughout the term of the contract. This helps enable a positive and mutually supportive strategic partnership.
4. The council and BBLP jointly set and review the strategic performance indicators (SPI), of which there are 16, which measure the contract's contribution to the council's strategic objectives. Each SPI has a specific definition which includes how each will be measured and performance calculated within set thresholds.
5. The contract sets out relevant periods for the review of strategic performance
  - i. the 3 financial years from and including 2014/15 to 2016/17;
  - ii. the 3 financial years from and including 2017/18 to 2019/20;
  - iii. the 2 financial years from and including 2020/21 to 2021/22;
  - iv. the 2 financial years from and including 2022/23 to 2023/24; and

- v. (Subject to extensions to the Contract Period having been granted in accordance with clause 31.3) the 2 financial years from and including 2024/5 to 2025/26.
6. The contract states that BBLP are awarded one year's extension to the contract period, for each relevant period in which they achieve either acceptable strategic performance in each of the financial years comprising the relevant period, or where the total performance score achieved is greater than the total score for acceptable strategic performance for those financial years comprising the relevant period. The aggregated score against the strategic performance indicators must not be less than 9 for BBLP to have achieved acceptable performance.
7. BBLP have provided a SPI report, which demonstrates the performance position, scoring mechanism, trends and outcome (Appendix 1 BBLP - SPI Report). The overall performance delivery is positive with 12 of the 16 indicators achieving acceptable or above performance. The total aggregated score against the strategic performance indicators is 18.22, for 2016/17, which is above the minimum required of 9.
8. The one SPI has resulted in a negative score (below lower threshold). This is SPI1 which measures the numbers killed and seriously injured on Herefordshire's roads. Where trends in performance indicate that the contract is not achieving the expected contribution to the council's corporate objectives, it will be reviewed, and if the circumstances merit it, adapted within the parameters of what can be achieved within the resources available to the council, whilst demonstrating value for money. Sadly there has been an upturn in the number of people who have been killed or seriously injured on our roads. This is a deviation from the positive downward trend that has been experienced in this area, over a number of years. Clearly this is cause for serious concern. In response, detailed work is underway to understand possible causes and identify appropriate solutions, which can be delivered. In this area of work it should be recognised that the council's influence over the causation of the incidents that lead to death or serious injury on our roads is limited, we do not have control over the behaviour of road users. At best we can only influence behaviour through our engineering and education interventions. Where we can identify engineering interventions that will, most likely, have a positive influence on this performance measure, these will be included as adaptations to the annual plan, and subsequent plans.
9. The performance data for Road Condition (SPI2, 3, 4 & 5) is derived from a survey of the surface condition of Herefordshire carriageway network. The survey is undertaken by WDM, whose vehicles are accredited as conforming to the surface condition assessment for the national network of roads (SCANNER) specification and processing software that is again accredited as conforming to UK Pavement Management System Standards (UKPMS).
10. The Customer Satisfaction SPI performance is analysed from the data collated through the National Highways and Transport (NHT) customer satisfaction surveys. The survey is independently managed and randomly surveys a number of households in Herefordshire on an annual basis. The data is available through the NHT website.
11. The council's contract management team have undertaken a full audit of the SPI report (see appendix 2 HC - SPI audit report), to test:
  - i. If the SPI definitions have been correctly applied;
  - ii. The source and accuracy of the data;

- iii. If the calculation is correctly applied and is correctly calculated;
  - iv. If SPI outcome is correctly reported in the monitoring report.
12. The audit concluded that the overall quality and accuracy of the SPI report is fit for purpose. The correct definitions, calculations and data sources have been applied for each of the indicators and the correct scores has been awarded.
  13. Two minor inaccuracies were identified, with an incorrect figure being submitted internally (BBLP), and wording being inverted in the report document; both were minor inaccuracies and this did not change the outcome or score reported. Improvements have been identified to mitigate the risk of inaccuracy in this process for the next review.
  14. Due to the strategic importance and value of the contract extension an external independent auditor was commissioned to undertake an audit of the council's SPI audit (see Appendix 3 – HKA audit). The audit identified one minor inaccuracy, where SPI8 is to be recorded to no decimal point, but the report had used to decimal point. This has been corrected and the scoring changed from 25.9 to 26 but this did not change the total score, due to thresholds.
  15. The public realm services contract requires contract extensions to be reviewed by the strategic partnership board (SPB) for the contract. The SPB members are; HC Director for Economy Communities and Corporate (Geoff Hughes), Assistant Director for Environment & Place (Richard Ball), Head of Highways & Communities (Clive Hall), Commercial & Contracts Manager (Laura Lloyd), Steve Halliwell (BBLP Managing Director) & Alasdair MacDonald (Contracts Director). The additional attendees to SPB are; Councillor Durkin and Councillor Price. The extension was presented to SPB on the 4<sup>th</sup> October and 4<sup>th</sup> December 2017. The SPB members support the proposed extension of the contract by one year.
  16. Whilst not a factor in determining contract extension it is of interest to note that; the contract also sets out 12 Operational Performance Indicators (OPI), these are monthly performance measures against service delivery and are assessed by the contract management team. BBLP are only entitled to the Fee Performance Element (25% of the fee) if they achieve at least 85% of the OPI's. To date good operational performance has been achieved and BBLP have been awarded the full fee performance element throughout the contract term to date.

## **Community impact**

17. There is clear evidence that the effective management of the public realm, which includes highways, parks and public rights of way, is an important contributor to the county's health, wellbeing and economy.
18. A clear measurable annual plan provides a mechanism for monitoring performance and supports the council to achieve its corporate plan priority to secure better services, quality of life and value for money for the people of Herefordshire

## **Equality duty**

19. 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.
20. 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. BBLP is fully aware of their contractual requirements in regards to equality legislation. This decision will have no negative impact on the council or BBLP's compliance with this duty.

## Resource implications

21. The annual contract value is approximately £20 million, of capital and revenue. An annual plan is developed in advance each year, which set out the proposed service and budget.
22. A Cabinet Member decision is taken each March for the financial year ahead, following the council's approval in February of the annual capital and revenue budgets which in turn align to the council's medium term financial strategy.

## Legal implications

23. The council has statutory duties to provide a number of the services which are contracted to BBLP under this arrangement. The council must ensure that the contract is robustly manage and appropriately scrutinised and reviewed to ensure that its specific statutory duties are met and also that the council's wider duty to obtain best value in the provision of all of its services is satisfied.
24. In procuring this long term contractual arrangement in 2013 the council contemplated a series of commercial incentives for the appointed contractor, of which this contract extension mechanism is part. To depart from this agreed mechanism so early in the contract without compelling financial or quality related reasons could give rise to difficulties with the contractual relationship with BBLP.
25. Robust contract management is any event essential for a long term contract which is of high financial value and of significant strategic importance. Price and quality must be regularly benchmarked to ensure that the contract continues to deliver best value for the council and its communities.

## Risk management

26. Associated risks with contract extension are detailed below:

Risk / opportunity	Mitigation
Ensuring value for money is achieved in future years	Value for money is tested at various stages of the annual commissioning process and the partnership are constantly looking at

Good quality effective service is continuously delivered

ways to improve value for the council and residents of Herefordshire.

Performance is closely monitored through Operational Performance Indicators and Strategic Performance Indicators, to ensure services are delivering to target and continuously improved, where possible. The contract model incentivises good quality performance.

## Consultees

27. The strategic partnership board have been consulted on this decision report, as part of due contract process. As a key decision political groups have been consulted as part of the governance process.

## Appendices

Appendix 1 – BBLP strategic performance report

Appendix 2 – HC strategic performance audit

Appendix 3 – HKA audit (external auditor)

## Background papers

None