

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>Thursday 30 January 2020</b>
<b>Title of report:</b>	<b>Building maintenance, small works and cleaning services for Herefordshire Council</b>
<b>Report by:</b>	<b>Cabinet member commissioning, procurement and assets</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.

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**

The council building maintenance and cleansing services were amalgamated under a single contract, which was procured through an open market tender exercise and this contract is due to terminate on the 31 August 2020. This contract now needs to be procured for a period from 1 September 2020 to 30 June 2023.

The relatively short term of this contract will provide a timeline for the completion of a strategic review of property services and subsequent implementation of change subject to approval.

The services delivered under this contract are critical to ensuring that the council is able to maintain its buildings in a condition that is safe for community users and staff. This contract enables Herefordshire Council to react to these requirements in a timely and cost effective way.

The council has a duty of care to ensure the safety of the users of over 100 of the council's operational buildings such as libraries, offices, children's centres and schools both visiting public and our staff; this contract enables the council to comply with these duties.

## **Recommendation(s)**

**That:**

- (a) a property maintenance and cleaning service contract be procured for a two and a half year period from 1 September 2020 – 30 June 2023 with provision for a one year extension; and**
- (b) the director of economy and place be authorised, following consultation with the cabinet member for assets, contracts and procurement, to award a contract to the successful provider for each or both services following tender evaluation, with a contract value of up to £12m per annum.**

## **Alternative options**

1. To procure a longer term contract; this option is not recommended as a strategic review of property services will be undertaken in 2020; this review will include recommendations which encompass the future delivery of maintenance and cleaning services, to ensure the council procure the most efficient and effective service going forward which accords with the new property services model.
2. Not to procure the service; this option is not recommended as the council have outsourced this service and do not have an in-house management resource required to manage the service and deliver continuous service provision.
3. To procure the service by way of two separate contracts (maintenance and cleaning); this option is not recommended as it would be a retrograde step and the efficiencies of single management i.e. not duplicating management structures, and delivery of services by a single provider which have achieved savings of £100k per annum, would be lost.
4. To transfer the services into the public realm contract; this option is not recommended as the council are seeking to undertake a fundamental service review and may therefore need to extract the service from the public realm contract at a future date, to procure the service going forward and this would create unnecessary cost and work.

## **Key considerations**

5. The current maintenance and cleaning service contract is delivered by Balfour Beatty Living Places (BBLP); the contract was awarded in September 2018 following an open market tender exercise further to a [cabinet decision on 12 April 2018](#) and the initial period was due to expire on the 31 August 2019. This was extended for a further year under the terms of the contract and as authorised by a [cabinet member decision](#). An assessment of the future delivery of the council's property service was undertaken during the last council administration. The assessment recommended commissioning the majority of property services by way of two contracts; one covering professional services and the other

maintenance and facilities management services. Further to the change in administration in May 2019, the cabinet member for commissioning, procurement and assets has requested that action in respect of this recommendation is suspended so that a further service review and options appraisal are undertaken to determine whether there are feasible options to retain some services in-house.

6. A short term contract for two and a half years will enable time for a full strategic review of property services to be completed, subsequent to which, and subject to approval, a service redesign and a procurement process will be undertaken for a long term provision of maintenance and cleaning services. This is to ensure the council employs the most effective and efficient model of service delivery going forward.
7. The two years and nine month contract will ensure consistent service, with the delivery of key day to day maintenance and the required regular testing and servicing of plant and equipment and the delivery of cleaning to council offices and buildings. It will ensure that corporate buildings are maintained, cleaned and remain fit for use. An evaluation of “need” of services will take place rather than repeat of current schedule and this will be assessed as part of the tender process; and include intention to drive savings and efficiencies.
8. A contract for two years and nine months i.e. from the 1 September 2020 to 30 June 2023 is considered appropriate as the termination date falls after the next council election and period of purdah. Ideally, the new contract would commence at the start of the financial year 2023/24, however this will be during purdah in respect of the next election and it is therefore considered prudent not to mobilise a new contract of this value during the election period.
9. The contract value has been reviewed to align with known budgets. The contract has the potential to be utilised to deliver capital projects relating to council owned property and small works capital projects up to a value of up to £250k per project. Any projects will be subject to the council’s standard governance process before they are progressed.
10. The contract will be based on the New Engineering Contract (NEC), or NEC Engineering and Construction Contract. It is a formalised system created by the Institution of Civil Engineers that guides the drafting of documents on construction projects, building services and can incorporate facilities management such as cleaning services. The contract provides clear visibility of delivery, cost and an early warning culture for positive partnership working and effective management of budget. The council’s contract management team’s portfolio consists of infrastructure and construction contracts, which have well established processes and procedures for NEC3 contracts, along with a newly designed and mobilised ICT system for change control.
11. The contract will be flexible to enable combining operations with other public organisations such as Housing Associations and the potential to be expanded in the event that the council chooses to own and manage its own housing stock in the future.
12. The contract is non-exclusive and the model sets out clear payment option mechanisms; Cost Reimbursable (sometimes called cost plus) is one in which the contractor is reimbursed the actual costs they incur in carrying out the works, plus management fee. This option is for works that are emerging or unable to define and the council hold the risk. Target Cost is agreed between the provider and council, this includes the provider’s estimate of what are called “Defined Costs” plus a fee which covers the provider costs,

overheads and profit. This option is shared risk between the provider and council and incentivises through pain or gain share. Lump Sum is a fixed price and interim payments are based upon the completion of activities which are included in an activity schedule. With this option the providers holds the risk and incentivises through pain or gain. Each commission will be reviewed to establish the most effective payment mechanism to provide effective cost management.

13. The council will be managing the contract and will undertake regular service reviews for continuous improvement and to demonstrate value for money; an example being grounds maintenance which was reviewed and delivered cost savings and improved efficiencies under the existing contract. This will include the provider's supply chain and subcontractors. Findings and outcomes will be shared for learning and implementation at contract level with any significant findings presented to the council's management board for cross directorate learning and improvements.
14. The contract will set out key performance indicators to monitor the performance of the service, this will be reviewed on a monthly basis through contract operational meetings. The key performance indicators will include measures to reduce the generation of carbon and align with council policy in respect of the Climate Emergency. A robust contract governance will be set out in the contract for clear routes of escalation and reporting. Data in respect of the estate assets covered by the contract will be verified for accuracy prior to the procurement process and subject to ongoing scrutiny during the contract period.
15. The provider can choose to lease a council premises (such as a unit at Three Elms Trading Estate) if available, to use as a depot and desk space for partnership working from the council for the contract period, at a commercial market rent. Alternatively they can acquire their own premises.
16. The tender will be evaluated on a cost and quality basis, with 60% quality and 40% cost, due to the contract model, with quality questions included in the invitation to tender (ITT) being given marks which will form the basis of the quality evaluation. The contract will also include social value requirements such as the use of local sub-contractors and labour.
17. The council will undertake market engagement in the early New Year in preparation for the tender going out to the market by the end of February 2020.
18. The proposed procurement timetable for the contract is:
  - Out to tender: February 2020
  - Tender evaluation: April 2020
  - Contract Award: June 2020
  - Mobilisation: June – August 2020
  - Commencement of new contract: 1 September 2020
19. As part of the new contract work will be undertaken to assess improved ways of managing the council's management of buildings, in partnership with the incoming provider, which will be utilised and tested in contract and in readiness for the strategic contract procurement in due course.

20. The strategic review of the council's future service needs will be undertaken in conjunction with the period of the new contract. The review will include options appraisals and horizon scanning to assess future needs. Once all options have been fully investigated and a preferred model has been identified, consideration will be given to the type and form of future maintenance and cleaning provision.
21. The two and a half year contract will have a one year extension period built in, for risk mitigation against failure to determine the strategic service review within the two year period. This is considered unlikely to be utilised at present.

## **Community impact**

22. The services delivered are critical to the council to enable it to ensure that its buildings are maintained in a condition that is safe for community users and staff. This contract enables Herefordshire Council to react to these requirements in a timely and cost effective way.
23. Effective asset management, by using the contract will ensure the council are spending funding on areas which will have the most positive impact for individuals utilising the buildings and are in line with corporate objectives.
24. The council has a duty of care to ensure the safety of the users of over 100 of the council's properties such as libraries, offices, children's centres and schools both visiting public and our staff; this contract enables the council to comply with these duties.
25. The contract will be used to ensure statutory compliance of our asset by providing the vehicle to deliver the appropriate servicing and inspection regime. This will enable compliance with all relevant Health and Safety legislation.

## **Equality duty**

26. 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.
27. 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. The successful provider will be made fully aware of their contractual requirements in regards to equality legislation. This decision will have no negative impact on the council or providers compliance with this duty.

## Resource implications

28. The annual contract value is up to £12m per annum. There are three key areas of spend, as detailed below. The contract value allows the provision of additional capital projects, should funding be available:
- (i) the provision of planned, reactive building maintenance and cleaning service up to £2.4m – included in revenue budget
  - (ii) the provision of council building renovation/improvement projects up to £4.5m - included in the capital budget
  - (iii) there is flexibility within the total contract value to add up to a further of up to £4.3m of additional capital projects, subject to identifying funding.
29. The potential rental income from the leasing of council premises will help the council achieve its targeted investment income. The council will look to provide savings within the procurement process.
30. All capital projects will be subject to the council's due governance requirements.
31. Expenditure in relation to maintenance construction services covers both revenue and capital elements. Expenditure in recent years has varied in line with demands placed upon the service (for example reflecting severe weather conditions), works identified as part of the condition surveys carried out on the council's estate and delivery of major projects.
32. The services are subject to TUPE for the existing contractor's staff and the TUPE information is being requested from the current providers and will be issued as part of the procurement process.

## Legal implications

33. This is an executive function under the council's constitution Part 3 Section 3 and 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 in Herefordshire) affected. It is also likely to result in the council incurring expenditure which is, or the making or savings which are, significant having regard to the council's budget for the service or function concerned. The leader has delegated this key decision to the cabinet member commissioning, procurement and assets as it relates to their portfolio.
34. In common with all occupiers and landowners, the council has legal obligations under legislation (including the Health and Safety at Work Act 1974 and the Building Act 1984), as well as under common law of negligence, to maintain its properties to a safe standard of repair and hygiene. The services proposed in this report should be regarded as essential to the council.
35. The procurement route recommended in this report is compatible with the requirements of the Public Contracts Regulations 2015. Additionally the competitive tendering exercise, coupled with robust performance management under the NEC3 contract model, should enable the council to demonstrate that it is meeting its statutory duty to secure best value in the delivery of these contracted services.

36. There are no other legal considerations.

## Risk management

37. Risks are being managed throughout this procurement process and a risk register is in place with appropriate mitigation identified. A number of key risks have been identified which are set out below:

Risk / opportunity	Mitigation
Satisfactory tenders may not be submitted	Given the response to the previous procurement exercise we believe there will be sufficient interest in the contract
TUPE. There are a small number of staff who would be TUPE'd on LGPS pension	TUPE information will be provided at start of tender stage and engagement with HR and Pension scheme to provide full information
TUPE. Sufficient mobilisation period to support TUPE is not possible but due to the timeframe available mobilisation will need to be completed within two months.	The required period is three months and this has been built into the procurement timeline. The council will work closely with the current provider who is aware of the timeframes and will support the incoming provider through as early effective engagement as possible
Delay achieving the target commencement date due to a compressed timetable for procurement and mobilisation	The council will support the appointed provider with mobilisation through a project management approach and apply sufficient resources to ensure that the target commencement date can be met
Ensuring value for money is achieved	Value for money will be tested at various stages of the commissioning process and the partnership will review ways to improve
Good quality effective service is continuously delivered	Performance will be closely monitored through Key Performance Indicators, to ensure services are delivering to target and continuously improved, where possible.
Slippage to the procurement timetable	Sufficient resources will be allocated to the process and technical support is available to ensure the procurement proceeds to plan.
Potential negative perception of the council if service isn't continuous.	A robust approach to mobilisation planning will be incorporated into the procurement to ensure the provider puts in

place service delivery arrangements for the complete range of services to be provided. This will include clear communication plans to explain any new arrangements to our customers and stakeholders.

## **Consultees**

38. Political groups have been consulted with as part of this decision and no material comments have been received.

## **Appendices**

None.

## **Background papers**

None identified.