

Decision maker:	Cabinet member commissioning, procurement and assets
Decision date:	Tuesday, 2 June 2020
Title of report:	Building Maintenance and Cleaning Contract
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.

Wards affected

(All Wards);

Purpose

To consider and approve an extension to the term of the existing service provision carried out by Balfour Beatty Living Places (BBLP) for building maintenance and cleaning of council property for a period of 12 months through a direct award of contract tender.

Recommendation(s)

That:

- (a) The term of the current contractor be extended for an initial 12 months with an option to extend for an additional 12 months, through a direct award, up to a maximum agreed cost of £12 million per annum, and;**
- (b) If the additional 12 month period is required, authority be delegated to the director of economy and place to decide, in consultation with the cabinet member and S.151**

Officer, whether to further extend the period of time these recommendations are effective.

Alternative options

1. Do nothing – and proceed with tender of new contract.
2. The council could decide to let the current contract expire and proceed with the tender of a new contract, however this is not a recommended option due to the risks associated with the current Covid-19 emergency:- Inflated costs; inability to obtain suitable tender return within time frames, mobilization risks; market place recovery being incomplete and legal challenge that may arise from continuing with the tender process.

Key considerations

3. The council has in place a contract to deliver maintenance and cleaning services across all of its owned estate outside of the public realm, and this expires on 31 August 2020. This was further to a cabinet member decision on the 12 August 2019 to extend the contract for a year (link: <http://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?ID=6193>)
4. In March 2020 work was initialised on the re-procurement of a contract to continue to deliver this service, this tender process was being undertaken in accordance with government guidelines in respect of public authorities' expenditure on contracts.
5. Due to the Covid -19 (coronavirus) emergency, consideration of the impact of the declared pandemic on a successful tender outcome being in an effective, efficient and fair manner has been undertaken. To that effect, that tender process has now been cancelled, and a review of appropriate timetables for re-tender is to be undertaken.
6. In line with the Cabinet Office Procurement Policy Note PPN01/20 responding to COVID-19, the council may utilise Regulation 72 (1) (c) of the Public Contract Regulations 2015 to extend or modify an existing contract in circumstances that could not reasonably be foreseen.. It is widely acknowledged that the impacts of COVID-19 were completely unforeseen.
7. In order to continue with this service provision it is proposed that the current contract is to be extended for a period of 12 months and this is directly awarded to BBLP.
8. The further option to extend for a further 12 months will be subject to a separate decision delegated to the Director, based upon the relevant factors at that time.
9. The reasons for not continuing to re- tender this contract at this stage can be summarised as follows:
 - a) Potential for prices to be inflated, due to bidders' inability to source appropriate sub-contractor support through the tender stage.
 - b) Tender extensions may be requested, whilst reasonable, this would prohibit the ability to successfully meet the original procurement timetable and achieve a contract commencement date of 1 September 2020.

Further information on the subject of this report is available from

Andrew Husband, Tel: 01432 383552, email: andrew.husband@herefordshire.gov.uk

- c) Mobilisation may be disrupted, dependent upon the restrictions on people movement at that time, or the need for further restrictions.
 - d) Mobilisation and/or provider transfer during a period of the pandemic having a destabilising effect/disruption on service delivery and subcontracting arrangements with the local supply chain.
 - e) Inability to enable site visits to enable bidders to review property stock sufficiently properly resulting in less competitive pricing and potential challenges.
 - f) Need for market place to recover (loss of skilled work potential through company closures etc.)
 - g) Potential for legal challenge on the basis that the impact on businesses can be more or less severe, dependent on size and/or structure.
10. The current contract has been in place with BBLP, and was subject to a previous formal decision, which implemented a contract for a 45 month period at a maximum value of £45 million. These recommendations are therefore contrary to this previous decision taken as the term is extended.
11. Following this agreed extension, it is expected that the situation regarding the Covid-19 pandemic will be clearer and allow for a re-tender of this contract to take place.

Community impact

12. The recommendations, as outlined, are necessary in order to allow the council to continue to deliver its front line services from its buildings and property to members of the public safely.

Equality duty

13. The concession in relation to the recommendation will be available to all, it is therefore anticipated that there will be no detrimental impact on any groups of people.

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.
14. The council have a duty to ensure that its buildings and property are safe and remain accessible to vulnerable and protected groups, where it is appropriate to do so. By allowing this contract to expire, or by not having sufficient maintenance and cleaning cover in place, this could place those members of the public at risk and reduce their ability to access public buildings for essential services.

Resource implications

15. The total cost of approving the extension to the contract with the existing service provider (BBLP) is up to a maximum of £12 million for a 12 month period. This cost will be met within existing maintenance and cleaning budgets, and therefore has no detrimental impact on expenditure. The service will be provided within the agreed annual budget. If the size of the property portfolio increases or decreases certain elements of work, and associated cost, such as cleaning and statutory compliance inspections will vary correspondingly. The provider is also required to review the service and work with the council to deliver efficiencies and share any gains in cost savings.

Legal implications

16. In accordance with the Local Government Act 1972 and under Part 4, Section 6 – contractual procedural rules, of the council constitution (Standing Orders) the council is authorised to contract providers for services it requires. As the value in this case (of the extension) exceeds £500,000 it is the Cabinet Member that is authorised to make this decision, with future decisions delegated. Regulation 72 (1) (c) of the Public Contract Regulations 2015 allows the council to extend or modify a contract during its term without a new procurement procedure if all the following criteria are met: (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen; (ii) the modification does not alter the overall nature of the contract; (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement. The costs associated with this extension represents less than 50% of the original contract value and there are no substantial amendments being made or required to the contract. The recommendations in this report are therefore in accordance with legislation and current guidance.

Risk management

17.

Risk / opportunity	Mitigation
<u>Risk</u>	
There is a risk that prices within the existing contract, to be extended, will be inflated.	Whilst inflationary costs for labour, materials etc. will be passed onto the council through the contract, the service provider has to demonstrate value for money. Furthermore officers continually review, and challenge where appropriate, all costs for the services provided.
There is a risk that a further extension may be required if the pandemic situation continues beyond the contract period.	The national progress regarding the pandemic situation will be monitored but the objective remains to procure a new contract in 2021. Director of Economy and Place in consultation with the Cabinet member will consider if any further measures to extend the contract at the appropriate time.

Further information on the subject of this report is available from

Andrew Husband, Tel: 01432 383552, email: andrew.husband@herefordshire.gov.uk

Consultees

18. The political groups have been consulted as part of this decision and the decision is supported, however would like reassurance that the scrutiny in BBLP will go ahead as soon as it can. The scrutiny of BBLP's contracted services is due to commence in May 2020.

Appendices

None

Background papers

None identified.

Please include a glossary of terms, abbreviations and acronyms used in this report.

BBLP – Balfour Beatty Living Places