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| Meeting: | Cabinet |
| Meeting date: | Thursday 24 September 2020 |
| Title of report: | Major contract performance review |
| Report by: | Cabinet member commissioning, procurement and assets |

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

This report shares the findings of a review of the performance of the council's major contracts for Public Realm services and Property and Facilities Management services, and recommends improvements for approval by Cabinet.

Recommendation(s)

That:

- (a) The suggested improvements are implemented in a timely manner to improve the performance of the major contracts for Public Realm services and Property and Facilities Management services, specifically:-**
 - a. Build technical knowledge within the Council**
 - b. Improve internal communication and education**
 - c. Increase the involvement of the procurement team**
 - d. Set up a contract management framework**
 - e. Consider an appropriate Contract Management System (CMS)**

Alternative options

1. This is a factual report with suggestions for improvements. The alternative option is not to implement some or all of the improvements suggested. This would result in reduced improvements to the performance of the major contract in place.

Key considerations

2. Herefordshire Council has carried out a review in relation to the Public Realm services and Property and Facilities Management services contracts provided by Balfour Beatty Living Places to identify possible improvements to the current contract management processes. The review was conducted via both desktop review of documents in relation to contract administration and contract management as well as interviews with key stakeholders in the Council to obtain qualitative data from multiple perspectives on what is considered to work well and does not with the contract.

Assessment of the contract administration process

3. Performance monitoring

- 3.1. The council outsourced the majority of highways and technical staff in 2008/9 as part of establishing a thin client model. This approach continued with the procurement of the Public Realm contract in 2013 with a transfer of staff from the previous provider to Balfour Beatty Living Places. As a result of this transfer of technical expertise, Balfour Beatty hold a strong bargaining position to deliver a wide range of works beyond the core programme. As a result, the Council has few in house technical resources and relies on Balfour Beatty for technical expertise and this can limit the ability to effectively monitor technical delivery performance.
- 3.2. The contract management team has 11 positions (including 4 vacancies) for Balfour Beatty contracts. There is a current proposal to reduce the team size to 9 positions. Based on this information, there appear to be sufficient resources within the contract management team to effectively scrutinise and perform sufficient number of checks on quality or price. However, the Council's contract management team's activities rely on tried and tested processes instead of evolving and continuing to improve the way in which the contract can be more effectively administered. This limits the Council's ability to act as an "intelligent client".

4. Financial monitoring

- 4.1. The Local Management Overhead (LMO) is calculated as part of the development of the Annual Plan. This covers only management activities as part of the core programme. The Council's contract management team is comfortable with LMO as it is currently charged. Other stakeholders within the Council believe that LMO should include any costs related to producing quotations and that a breakdown of LMO should be provided.
- 4.2. It is widely understood within the Council that Balfour Beatty charges a £500 fee to provide quotations on newly requested work. However, the contract management team clarifies that there is not a flat fee from Balfour Beatty for quotes.
- 4.3. Altogether, there is an opportunity to clarify and clearly communicate to all stakeholders how Balfour Beatty charges for LMO and quotations and what activities are accounted for within the charges. For example, the contract management explains that within the Community Commissioning Model (CCM), cost for the assessment of newly requested

work is quoted by Balfour but that this is not charged should the work not progress as it is accounted for in the LMO. As LMO is calculated for the core programme as part of the Annual Plan, it is unclear how a quote for newly requested work outside the core programme can be charged retrospectively under LMO.

5. Compliance monitoring

- 5.1. A contract compliance officer has been in post since March 2020 within the corporate commercial services team. There is limited evidence which demonstrates that sufficient compliance monitoring has been taking place to date.

Assessment of the contract management process

6. Risk management

- 6.1. The monthly Performance Report - Risk Register does not sufficiently log actions related to risks. Each risk should be accompanied by a strategic plan, which is to either accept, mitigate or transfer the risk. These strategic plans should also be accompanied by clear actions against each which are tracked and updated each month (even if there is no progress).
- 6.2. The current Performance Report - Risk Register updates actions every few months, which is not frequent enough. This may mean either that not enough actions are being identified to mitigate risks, the actions are not being performed in a timely manner or the risk register is not recording updates in a timely manner.

7. Relationship management

- 7.1. There appears to be little constructive tension between the Council's contract management team and Balfour Beatty. This may hamper the ability for the Council to effectively challenge and drive efficiencies in the contract including continuous improvement (e.g. year-on-year savings). From the minutes from operations meetings, there is a lack of evidence for competitive dialogue that typically takes place between the client organisation and the service provider.
- 7.2. Balfour Beatty is perceived by some stakeholders to provide a lack of strategic direction for how to most effectively operate and maintain the Council's assets. Balfour Beatty is perceived to also exhibit poor communication, particularly with regards to relatively small jobs related to the Community Commissioning Programme. The resulting impression is that Balfour Beatty does not always provide the level of proactive support as well as collaborative behaviour that would be expected from a strategic partner (e.g. prompt responses to requests, consideration of reduction in management fees).
- 7.3. The Council's contract management and the Balfour Beatty team are co-located in Balfour Beatty's offices. There are demonstrable benefits to the teams being co-located including efficiencies in communication, particularly as Balfour Beatty manages a complicated programme with regular changes to incorporate. Nonetheless, there is an opportunity to consider the teams being co-located at the Council's offices.

8. Change management

- 8.1. The Balfour Beatty contract is included in the Council's central contracts register. However, framework agreements with Balfour Beatty and call offs related to these frameworks are not included in the contracts register. As these framework agreements

and call offs are regularly used to commission work, it will be important for the Council to add them to the contracts register.

9. The Council's internal governance and processes that appear to directly impact how effectively the Council can manage the contracts with Balfour Beatty.

- 9.1. There is an expectation that the procurement team (at least partially due to lack of resources) focus on providing strategic guidance to commissioners rather than operational support. However, the procurement team has had limited involvement in the processes for commissioning work to Balfour Beatty. The procurement team manages a pipeline of upcoming work, which does not include works related to Balfour Beatty. This removes the ability for the procurement team to provide strategic advice or to conduct value adding activities such as social value checks.
- 9.2. The Council does not appear to be adhering to the Contracts Procedures Rules when commissioning works to Balfour Beatty for works outside the core programme. For instance, minimum 3 competitive quotes are not obtained nor is the opportunity openly advertised for works between £5,000 and £75,000. Similarly, open tenders are not conducted for works between £75,000 and £189,000 (below the threshold for EU compliant measures). The commissioning process for works not included in the Annual Plan has only one outcome, which is for Balfour Beatty to "receive SO (Standing Order) and conduct the works". This is not consistent with the Contract Procedures Rules. Stakeholders within the Council confirm that projects related to building maintenance below £250,000 are commissioned to Balfour Beatty without an open tender.
- 9.3. There appears to be a lack of clarity between the contract rules and procedures across the Property and Public Realm contracts, which are both with Balfour Beatty. During this review, which was focused on the Public Realm contract, information related to the Property contract was cited in each interview when addressing questions around contract management processes.
- 9.4. There also appears to be some confusion within the Council as to the first port of call when commissioning work to Balfour Beatty, the roles & responsibilities of the contract management team vs the internal client team, how charging works including fees for quotes, and what pricing structures are appropriate for what types of works. For instance, despite confirmation that the contract management team should not be involved in commissioning work but rather only focus on managing the contract, it is clear that the contract management team is directly involved in the commissioning process. This lack of clarity and consistent understanding negatively impacts the internal client teams' decision around whether Balfour Beatty will be best placed to deliver the required work.

Key findings from the assessment

10. The Council relies on Balfour Beatty for technical expertise and is unable to effectively monitor technical delivery performance. The contract management team's activities rely on tried and tested processes, which does not sufficiently challenge the service provider or emphasise continuous improvement in the way the contract can be more effectively administered. This limits the Council's ability to act as an "intelligent client".
11. There is an inconsistent understanding within the Council around how various charges are applied. Therefore, there is an opportunity to clarify and clearly communicate to all stakeholders within the Council (including the internal client teams) how Balfour Beatty

charges for local management overhead (LMO), quotations and what activities are accounted for within the charges.

12. There is a perception within the Council that the contract management team is too close to Balfour Beatty. As the Council's contract management and Balfour Beatty teams are co-located in Balfour Beatty's offices, there is an opportunity to consider the teams being co-located at the Council's offices instead. Meanwhile, the Council's procurement team has only had limited involvement in the process commissioning work to Balfour Beatty. This removes the ability for the procurement team to add value.
13. Framework agreements and call offs are regularly used to commission work but are not included in the contracts register. When commissioning works outside the core programme, the contract management team does not appear to be adhering to the Contracts Procedures Rules. In fact, there appears to be a lack of clarity between the contract rules and procedures across the Property and Public Realm contracts, which are both with Balfour Beatty. There also appears to be some confusion within the Council as to the first port of call when commissioning work to Balfour Beatty, the roles & responsibilities of the contract management team versus the internal client team, how charging works including fees for quotes, and what pricing structures are appropriate for what types of works.

Recommendations

14. Build technical knowledge within the Council

The limited in-house technical team increases the Council's reliance on Balfour Beatty and limits the ability to effectively scrutinise their performance. This can be addressed by either building in-house technical capabilities or by seeking second opinions more regularly (e.g. by receiving competitive solutions / proposals from other suppliers). There is a risk that the Council is over reliant on Balfour Beatty for end-to-end delivery of its infrastructure, property and public realms works. Considering the upcoming expiry of the Public Realms contract in November 2020, the Council does not appear to have fully assessed the risk of losing technical knowledge and expertise that is currently concentrated within the Balfour Beatty team.

15. Improve internal communication and education

The contract management team can help avoid conflicting views on a number of topics including LMO, fees on quotations and timing of gainshare calculations. There is an immediate opportunity for the internal client teams to better understand the Balfour Beatty contract. The contract management team is best placed to lead this initiative.

16. Increase the involvement of the procurement team

For a contract of this size and strategic importance, a representative from the procurement team would be typically involved in project governance meetings. The procurement team requires a better understanding of the Balfour Beatty contract in order to effectively inform decisions and options appraisals, which will ultimately help demonstrate value for money on each commissioning decisions.

17. Set up a contract management framework

The current contract management process and guidelines are not fully documented and some documentations are inconsistent such as the non-Annual Plan service process map

are inconsistent with the Council's governance policies. Put together a contract management framework which addresses performance of internal audits. This initiative can be led by the contract compliance officer who is in post since March 2020.

18. Consider an appropriate Contract Management System (CMS)

An appropriate Contract Management System (CMS) can significantly improve the quality of information, reduce ambiguities around contractual clauses and Service Level Agreements (SLA), and reduce manual workload related to contract management activities. The Council does not currently use the contract management module of the tender portal, which is considered too basic and insufficient for its requirements. The Council can consider the use of an appropriate CMS, which can significantly improve the quality of information, reduce ambiguities around contractual clauses and Service Level Agreements (SLA), and reduce manual workload related to contract management activities. It is recommended that an industry leading off-the-shelf CMS is considered in the first instance as such solutions translate good practice contract management processes into workflows, and there is an opportunity for the Council to adopt elements of these underlying processes.

Community impact

19. To ensure the optimum performance of the major contract for public realm supports the delivery of the best value for money and community impact of the services the contract provides.

Environmental Impact

20. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
21. Whilst this is a decision on reviewing a major contract in place, consideration is given to minimise waste and resource use in line with the Council's Environmental Policy when procuring works through the contract.

Equality duty

22. 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.

23. 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 report on the performance of an existing contract, we do not believe that it will have an impact on our equality duty.

Resource implications

24. The suggested improvements to improve the performance of the major contract for public realm will largely be resource implication neutral. Contract efficiencies can fund the resource implications of the recommendations proposed.
25. The contract provision is supported by council staff costs that total approximately £0.3m in revenue costs and £0.7m in capital costs, per annum. Council officers have agreed the proposed action plan and the cost of implementing this will be contained within existing budgets.

Legal implications

26. There are no legal implications as a result of the proposed improvements discussed in this report.

Risk management

27. To improve the performance of the major public realm contract will reduce the risk of mis-management and non-compliance with contract procedure rules. The monthly Performance Report - Risk Register does not sufficiently log actions related to risks. Each risk should be accompanied by a strategic plan, which is to either accept, mitigate or transfer the risk. These strategic plans should also be accompanied by clear actions against each which are tracked and updated each month (even if there is no progress).
28. There is a need to build technical knowledge within the Council to reduce the risk of the Council being over reliant on Balfour Beatty for end-to-end delivery of its infrastructure, property and public realms works.

Consultees

29. None

Appendices

None

Background papers

None identified